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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 92

FLORENCE GUGGENHEIM, PETITIONER,

**ALMON Q. RASQUIN, INDIVIDUALLY AND AS
UNITED STATES COLLECTOR OF INTERNAL
REVENUE FOR THE FIRST DISTRICT OF NEW
YORK**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 21, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

2

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SUPREME COURT OF THE UNITED STATES

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No. 92

FLORENCE GUGGENHEIM, PETITIONER,

vs.

ALMON Q. RASQUIN, INDIVIDUALLY AND AS
UNITED STATES COLLECTOR OF INTERNAL
REVENUE FOR THE FIRST DISTRICT OF NEW
YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit.....	1	1
Statement under Rule 13.....	1	1
Record from D. C. U. S., Eastern District of New York.....	3	3
Docket entries	3	3
Summons	4	4
Complaint	5	5
Exhibit "A"—Claim for refund filed by Florence Guggenheim with the Collector of Internal Revenue	10	10
Stipulation extending time to answer, dated February 3, 1939	15	15
Stipulation extending time to answer, dated March 1, 1939	16	16
Answer	17	17
Stipulation re exhibits	20	20
Exhibit "A"—Policy No. 1,225,190 of the Union Central Insurance Company.....	23	23
Exhibit "B"—Policy No. 462,569 of the Connecticut General Life Insurance Company.....	40	40

Record from D. C. U. S., Eastern District of New York—
Continued

	Original	Print
Stipulation re exhibits—Continued		
Exhibit "C"—Policy No. 12,486,936 of the New York Life Insurance Company.....	52	52
Exhibit "D"—Policy No. 632,645 of the National Insurance Company of Vermont.....	72	72
Exhibit "E"—Policy No. 1,226,200 of the Union Central Insurance Company	90	90
Exhibit "F"—Policy No. 8,740,620 of the Prudential Life Insurance Company	108	108
Exhibit "G"—Policy No. 9,687,735 of the Equitable Life Assurance Society	122	122
Exhibit "H"—Policy No. 4,918,863 of the Mutual Life Insurance Company	144	144
Exhibit "I"—Policy No. 1,226,201 of the Union Central Insurance Company	156	156
Notice of motion for judgment.....	174	174
Opinion by Galston, D. J.	175	175
Judgment	182	182
Amended judgment	183	183
Stipulation	185	185
Affidavit of Herbert I. Sorin.....	188	188
Notice of appeal.....	190	190
Stipulation as to record.....	192	192
Clerk's certificate..... (omitted in printing)	193	
Opinion, Patterson, J.	194	194
Judgment	200	198
Clerk's certificate	202	199
Order allowing certiorari	203	200

**IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

FLORENCE GUGGENHEIM, Plaintiff-Appellee,

against

**ALMON G. RASQUIN, individually and as United States Col-
lector of Internal Revenue for the First District of New
York, Defendant-Appellant**

STATEMENT UNDER RULE 13

This is an appeal by the defendant above named from a decision dated and entered in the office of the Clerk of the United States District Court for the Eastern District of New York on July 5, 1939, and from the judgment on the pleadings entered in this action on July 14, 1939, and from the amended judgment entered in this action on August 26, 1939, in favor of the plaintiff, Florence Guggenheim, against the defendant, Almon G. Rasquin, individually and as United States Collector of Internal Revenue for the First District of New York, in the sum of \$15,254.74, with interest thereon from January 25, 1937, and costs as taxed in the sum of \$10.00.

This action was commenced on November 9, 1938 by the filing of a complaint and the issuance of a summons. The answer was filed on March 15, 1939.

On June 7, 1939 a motion by the plaintiff for judgment on the pleadings came on before the Hon. Clarence G. Gals. on. Decision was reserved.

No question was referred to a Commissioner, Master or Referee.

The Court's decision was rendered on July 5, 1939, granting plaintiff's motion for judgment on the pleadings.

On July 14, 1939 judgment was entered in favor of the plaintiff for \$15,254.74, plus interest from January 25, 1937, in the sum of \$2262.79, amounting in all to \$17,517.53, and costs as taxed in the sum of \$10.00.

However, on August 26, 1939, the foregoing provision of \$2262.79, interest on the judgment was eliminated, and the

amended judgment decreed that the plaintiff recover of the defendant the sum of \$15,254.74, with interest thereon from January 25, 1937.

On October 10, 1939 defendant's Notice of Appeal from the decision, judgment and amended judgment was filed.

The names of the parties are as stated above, and there has been no change in parties.

The name of the attorney for the defendant is now Harold M. Kennedy, United States Attorney for the Eastern District of New York.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

DOCKET ENTRIES

Civil Action 57

1938

- Nov. 9th Complaint filed summons issued.
" 16th Summons returned and filed served on defendant.

1939

- Mar. 15th Stipulation filed extending time to answer, etc.
" " Answer filed.
Apr. 22nd Stipulation filed.
June, 1st Notice of motion filed for judgment on the pleadings, etc.
" 7th Galston, J. Hearing on above motion for judgment on the pleadings argued—decision reserved—submit June 21, 1939.
July 5th By Galston, J. Decision rendered granting plaintiff's motion for judgment on the pleadings.
" 14th Judgment favor plaintiff for \$15,254.74, plus interest from January 25, 1937, in the sum of \$2,262.79, amounting in all to \$17,517.53, filed and docketed. Copy mailed to attorney for defendant.
Aug. 26th By Galston, J. Amended judgment filed.
Oct. 10th Notice of appeal filed. Copy mailed to attorneys for plaintiff.

IN UNITED STATES DISTRICT COURT

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Paul B. Barringer, Jr. plaintiff's attorney, whose address No. 15 Broad Street, Borough of Manhattan, New York City an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Percy W. B. Gilkes, Clerk of Court. By S. R. Feuer,
Deputy Clerk. (Seal.)

Date: Nov. 9, 1938.

IN UNITED STATES DISTRICT COURT

COMPLAINT

The plaintiff, complaining of the defendant, by Paul B. Barringer, Jr., her attorney, respectfully shows and alleges:

I. That plaintiff was at all times hereinafter mentioned and at the time of the commencement of this action, and now is, a citizen of the United States of America and of the State of New York and resides at Port Washington, in the County of Nassau, State of New York.

II. The defendant was at all times hereinafter mentioned the United States Collector of Internal Revenue for the First District of New York, with headquarters at the Post Office Building, Borough of Brooklyn, County of Kings, City of New York.

III. This is a suit for the recovery of a Federal gift tax assessment for the calendar year 1934 which was erroneously and illegally collected by the defendant from the plaintiff. The matter in controversy, exclusive of interest or costs, is the sum or value of \$15,254.74, and arises under the Constitution and laws of the United States as hereinafter more fully appears.

IV. On or about the 15th day of March, 1935, the plaintiff filed with the United States Collector of Internal Revenue for the Second New York District her Federal gift tax return for the calendar year 1934, and at the same time paid a tax thereon in the amount of \$52,872.93.

V. In said Federal gift tax return the plaintiff reported under Item 3 of Schedule A a gift of two single premium life insurance policies to M. Robert Guggenheim having a combined cash surrender value on the date of the gift of \$155,915.09. The policies in question were policy No. 1,225,190 of the Union Central Insurance Company assigned on December 31, 1934, and policy No. 462,569 of the Connecticut General Insurance Company, assigned on December 27, 1934.

VI. In said Federal gift tax return the plaintiff reported under Item 4 of Schedule A a gift of four single premium life insurance policies to Gladys C. Straus, having a combined cash surrender value on the date of the gift of \$251,012.26. The policies in question were policies No. 12,486,936 of the New York Life Insurance Company, assigned on December 29, 1934; No. 632,645 of the National Insurance Company of Vermont, assigned on December 27, 1934; No. 1,226,200 of the Union Central Insurance Company, assigned on December 31, 1934; and No. 8,740,620 of the Prudential Life Insurance Company, assigned on December 27, 1934.

VII. In said Federal gift tax return the plaintiff reported under Item 7 of Schedule A a gift of three single premium life insurance policies to Harry G. Guggenheim, having a combined cash surrender value on the date of the gift of \$310,417.46. The policies in question were policies No. 9,687,735 of the Equitable Life Assurance Society, assigned on December 27, 1934, No. 4,918,863 of the Mutual Life Insurance Company, assigned on December 27, 1934, and No. 1,226,201 of the Union Central Insurance Company assigned on December 31, 1934.

VIII. The Commissioner of Internal Revenue, by a letter dated August 3, 1936, erroneously determined that the aforesaid policies described in Paragraphs V, VI, and VII should be valued not on their cash surrender value on the date that the same were irrevocably assigned to the named donees, M. Robert Guggenheim, Gladys C. Straus and Harry F. Guggenheim, but on the basis of their cost to the plaintiff. In accordance with this determination the Commissioner of Internal Revenue ruled that the value of the policies set forth in paragraphs numbered V on the date of their assignment was \$189,901.70; that the value of the policies set forth in paragraph numbered VI on the date of their assignment was \$295,412.30, and that the value of the policies set forth in paragraph VII on the date of their assignment was \$367,124.50, and on or about January 11, 1937, assessed a deficiency against the plaintiff in the amount of \$13,804.69, together with interest thereon in the amount of \$1,450.05, which amounts were paid by the plaintiff to the defendant on or about January 25, 1937.

IX. On or about June 30, 1938, the plaintiff filed with the defendant a claim for refund of the aforementioned assessment of \$13,804.69 and interest paid thereon in the amount of \$1,450.05. A true and correct copy of the claim for refund is attached hereto, made a part hereof and marked "Exhibit A". The Commissioner of Internal Revenue by registered letter dated October 6, 1938, rejected this claim for refund in its entirety.

X. The plaintiff avers that the true value of the aforementioned policies on the date that they were irrevocably assigned to the aforesaid donees is their market value, and

that the best evidence of the market value of insurance policies is their cash surrender value. Accordingly, the valuations placed on said policies by the Commissioner of Internal Revenue were arbitrary and inconclusive, and the full amount of the claim for refund of \$15,254.74 should be refunded to the plaintiff.

XI. The Commissioner of Internal Revenue is without authority under the Revenue Act or otherwise to disallow the aforesaid claim for refund in the amount of \$15,254.74 which was erroneously, illegally and wrongfully demanded, collected and received by the defendant from the plaintiff, and was and is without authority under the Acts of Congress or otherwise to assess or cause to be assessed in any form or manner whatsoever the aforesaid deficiency against the plaintiff, and the same was erroneously and illegally imposed and assessed by the said Commissioner.

XII. The defendant, individually and as Collector of Internal Revenue for the First District of New York, was and is without authority under the Acts of Congress or otherwise to demand, collect or receive the aforesaid sum of \$15,254.74 so paid by the plaintiff to the defendant and the said sum was erroneously and illegally demanded, collected and received by the defendant from the plaintiff and was not due from the plaintiff to the defendant at the time said sum was collected and received by the defendant or at any other time, either before or since that date.

XIII. No part of said sum of \$15,254.74 has been remitted, refunded or repaid to the plaintiff or to any person or corporation on her account by the defendant.

Wherefore plaintiff demands judgment against the defendant for the sum of \$15,254.74, together with interest

thereon according to law, and the costs and disbursements of this action.

Paul B. Baerlinger, Jr., Attorney for Plaintiff, Office
& P. O. Address, No. 15 Broad Street, Borough of
Manhattan, New York City.

EXHIBIT "A"

Claim

To be Filed With the Collector Where Assessment Was
Made or Tax Paid

STATE OF NEW YORK,
County of New York, ss:

Type
or
Print

Name of taxpayer or

purchaser of stamps FLORENCE GUGGENHEIM

Business address: 120 Broadway, New York, N. Y.

Residence: Port Washington, Long Island, New York.

The deponent, being duly sworn according to law, deposes
and says that this statement is made on behalf of the tax-
payer named, and that the facts given below are true and
complete:

1. District in which return (if any) was filed Second
New York (erroneously entered on original claim as First
New York)

2. Period (if for income tax, make separate form for each
taxable year) from Jan. 1, 1934, to Dec. 31, 1934.

3. Character of assessment or tax Gift.

4. Amount of assessment, \$15,254.74; dates of payment
Jan. 15, 1937.

11

5. Date stamps were purchased from the Government
—, —.

6. Amount to be refunded \$15,254.74 and int.

7. Amount to be abated (not applicable to income or estate taxes) \$—.

8. The time within which this claim may be legally filed expires, under Section 528 of the Revenue Act of 1932, on Jan. 15, 1940.

The deponent verily believes that this claim should be allowed for the following reasons:

(See Rider Attached)

Signed Florence Guggenheim.

Sworn to and subscribed before me this 28th day of June 1938. Joseph O. Johnson, Notary Public, N. Y. Clerk's No. 65, Reg. No. 9-J-1. Commission expires March 30, 1939. (Seal.)

—
Rider

In the year 1934 the taxpayer irrevocably assigned certain single premium life insurance policies. In reporting these assignments in her 1934 gift tax return, the taxpayer entered as the value of the same the cash surrender value of the policies as furnished her by the companies who issued the same. Upon an audit of this return, the Commissioner determined that the cost to the taxpayer, rather than the

cash surrender value of the policies in question, was the value to be used for computing her gift tax liability. These policies appear under Items 3, 4 and 7 of Schedule A of the return, and were assigned respectively to M. Robert Gugenheim, Gladys G. Straus and Harry F. Gugenheim.

Under Item 3 of said Schedule the taxpayer returned gifts of the value of \$158,112.59, of which sum \$155,915.09 represented the cash surrender value of the following policies:

Union Central Insurance Company Policy No.	
1,225,190 Cash Surrender Value	\$90,632.07
Connecticut General Insurance Company Policy	
No. 462,569 Cash Surrender Value	65,283.02
	<hr/>
	\$155,915.09

The Commissioner determined that the value of the gifts under this item was \$189,901.70.

Under Item 4 of said Schedule the taxpayer returned gifts of the value of \$252,411.26, of which sum \$251,012.26 represented the cash surrender value of the following policies:

New York Life Insurance Company Policy No.	
12,486,936 Cash Surrender Value	\$73,508.00
National Insurance Company of Vermont Policy	
No. 632,645 Cash Surrender Value	74,150.94
Union Central Insurance Company Policy No.	
1,226,200 Cash Surrender Value	31,372.64
Prudential Life Insurance Company Policy No.	
8,740,620 Cash Surrender Value	71,980.68
	<hr/>
	\$251,012.26

The Commissioner determined that the value of the gifts under this item was \$295,412.30.

Under Item 7 of said Schedule the taxpayer returned gifts of the value of \$316,417.46, of which sum \$310,417.46 represented the cash surrender value of the following policies:

Equitable Life Assurance Society Policy No.	
9,687,735 Cash Surrender Value	\$146,446.72
Mutual Life Insurance Company Policy No.	
4,918,863 Cash Surrender Value	146,541.50
Union Central Insurance Company Policy No.	
1,226,201 Cash Surrender Value	17,429.24
	<hr/>
	\$310,417.46

The Commissioner determined that the value of the gifts under this item was \$367,124.50.

The taxpayer believes that her claim should be allowed for the reason that the true value of the gifts in question on the date they were made is not what the cost was to her, but what their then market value was. The fact that the policies were assigned on the date that they were issued is immaterial, for once issued their value is not the cost to the insured or the face value, but what a willing buyer will pay a willing seller. *Walls v. Commissioner*, 60 Fed. (2nd) 347; *Williams v. Commissioner*, 45 Fed. 61; *Helvering v. Walbridge*, 70 Fed. (2nd) 683. In the case of insurance policies, their market value is generally assessed as being their cash surrender value. Accordingly, it is not within the province of the Commissioner to prescribe by regulation (Reg. 79, Article 19, Subdivision 9) a restrictive method for determining the value of any particular class of prop-

erty. In the instant case the Commissioner's valuation is arbitrary and inconclusive, in holding that the value of the policies in question on the date of their assignment was their cost to the taxpayer and not their cash-surrender value. Ernest Cronin v. Commissioner, 37 B. T. A. 134; Mary H. Haines v. Commissioner, 37 B. T. A. 149.

IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties herein that the time of the defendant to serve and file an answer, or move with respect to the complaint herein, be and the same is hereby extended up to and including the 2nd day of March, 1939.

Dated: Brooklyn, New York, February 3, 1939.

Paul B. Barringer, Jr., Attorney for Plaintiff, Vine
H. Smith, United States Attorney, Eastern Dis-
trict of New York, 519 Federal Building, Brooklyn,
New York, Attorney for Defendant, by Hyman H.
Goldstein, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties herein that the time of the defendant to serve and file an answer, or move with respect to the complaint herein, be and the same is hereby extended up to and including the 16th day of March, 1939.

Dated: Brooklyn, New York, March 1st, 1939.

Paul B. Barringer, Jr., Attorney for Plaintiff, Vine
H. Smith, United States Attorney, Eastern Dis-
trict of New York, Attorney for Defendant, by
William S. Perlman, Assistant United States At-
torney.

IN UNITED STATES DISTRICT COURT

ANSWER

The defendant, by Vine H. Smith, United States Attorney for the Eastern District of New York, for answer to the complaint herein, alleges:

I

The defendant admits each and every allegation contained in paragraphs I, II, IV, V, VI, VII, IX and XIII of the complaint.

II

The defendant admits the allegations contained in paragraph III of the complaint except that it is denied that the gift tax assessment for the calendar year 1934 was erroneously and illegally collected by the defendant from the plaintiff.

III

The defendant admits the allegations contained in paragraph VIII of the complaint except that it is denied that the Commissioner of Internal Revenue erroneously determined that the policies described in paragraphs V, VI, and

VII of the complaint should be valued on the basis of their cost to the plaintiff.

IV

The defendant admits the allegations contained in paragraph X of the complaint except that it is denied that the best evidence of the market value of insurance policies is their cash surrender value, and that the valuations placed on said policies by the Commissioner of Internal Revenue were arbitrary and inconclusive, and that the full amount of the claim for refund of \$15,254.74 should be refunded to the plaintiff.

V

The defendant denies each and every allegation in paragraphs XI and XII of the complaint.

VI

Further answering the complaint herein the defendant alleges that the Commissioner of Internal Revenue correctly determined plaintiff's gift tax liability with respect to gifts of insurance policies assigned to M. Robert Guggenheim, Gladys C. Straus and Harry G. Guggenheim, and that said Commissioner correctly determined the amount of the gifts to be the cost to plaintiff of said contracts of insurance, said contracts of insurance having been assigned to said donees immediately upon issuance thereof by the insurer.

Wherefore, it is requested that judgment be entered for the defendant, dismissing plaintiff's complaint with costs.

Vine H. Smith, United States Attorney, Attorney for
Defendant, by William S. Perlman, Assistant
United States Attorney.

IN UNITED STATES DISTRICT COURT

STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between the parties through their counsel that the attached photostats marked Exhibit A to J, inclusive, are true and correct copies of the following life insurance policies which are referred to in Paragraphs V, VI and VII of the complaint herein:

Policy No. 1,225,190 of the Union Central Insurance Company.

Policy No. 462,569 of the Connecticut General Insurance Company.

Policy No. 12,486,936 of the New York Life Insurance Company.

Policy No. 632,645 of the National Insurance Company of Vermont.

Policy No. 1,226,200 of the Union Central Insurance Company.

Policy No. 8,740,620 of the Prudential Life Insurance Company.

Policy No. 9,687,735 of the Equitable Life Assurance Society.

Policy No. 4,918,863 of the Mutual Life Insurance Company.

Policy No. 1,226,201 of the Union Central Insurance Company.

and

It Is Further Stipulated that photostatic copies of the aforementioned policies may be offered in evidence with the same force and effect as if they were originals; and

Policy No.	Company	Date Policy Assigned	Cash Surrender Value on Date of Assignment
1,225,190	Union Central Insurance Company	Dec. 31, 1934	\$90,632.07
462,569	Connecticut General Insurance Company	Dec. 27, 1934	65,283.02
12,486,936	New York Life Insurance Company	Dec. 29, 1934	73,508.00
632,645	National Insurance Company of Vermont	Dec. 27, 1934	74,150.94
1,226,200	Union Central Insurance Company	Dec. 31, 1934	31,372.64
8,740,620	Prudential Life Insurance Company	Dec. 27, 1934	71,980.68
9,687,735	Equitable Life Assurance Society	Dec. 27, 1934	146,446.72
4,918,863	Mutual Life Insurance Company	Dec. 27, 1934	146,541.50
1,226,201	Union Central Insurance Company	Dec. 31, 1934	17,429.24

Dated, April 18th, 1939.

Paul B. Barringer, Jr., Attorney for Plaintiff, Vine
H. Smith, Attorney for Defendant, United States
Attorney, by William S. Perlman, Assistant U. S.
Attorney.

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130
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EXHIBIT "A" ANNEXED TO STIPULATION

Assignment of Policy No. 1225190

ON THE LIFE OF

Flora Suggenhem

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

For Value Received ✓ hereby assign, transfer and set over the above described policy of insurance, together with all rights reserved to me as the insured under the said policy, or as the owner thereof, or as the beneficiary thereunder, or as the assignee thereof, and all sum or sums of money, interest, benefit and advantage whatsoever, now due or hereafter to become due to me by virtue thereof, unto

Mr Robt M Robert Suggenhem

No. _____ Street

City Babylon State N Y

It is hereby certified that the undersigned has not been declared a bankrupt and that no proceedings to declare the undersigned a bankrupt are now pending and that there has been no assignment of the said policy.

Witness my hand and seal

at New York in the state of New York
this 27 day of December 1934

Flora Suggenhem (L. S.)
Witness

Witness

(Sign in Ink)

(L. S.)

Assignment of a Policy should be executed in duplicate, and the duplicates sent to the Home Office of the Company for record.

This form of Assignment is furnished by the Company. As the laws of the various states differ, it is urged that the Assignment be filled out and signed under the direction of some competent attorney who is familiar with the laws of the state in which it is to be executed.

The Company does not guarantee the validity of any Assignment.

ATTACH THIS ASSIGNMENT TO THE POLICY

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Policy No. 1,225,190 of the Union Central Insurance
Company.

Sheet 1

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 2

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No. 1225190

AGE 71

THE UNION CENTRAL LIFE INSURANCE COMPANY CINCINNATI, OHIO

HEREBY INSURES THE LIFE OF

1. Insured FLORENCE CUNNINGHAM in

2. Amount the amount of ONE HUNDRED THIRTY THOUSAND Dollars

3. Death payable on receipt of due proof of death of said insured during the continu-

ance of this policy, less any indebtedness and advances hereon, at its Home

4. Beneficiary Office in Cincinnati, Ohio, to the beneficiary hereinafter named.

5. Premium This policy is issued in consideration of a premium

of ONE HUNDRED NINE THOUSAND NINE HUNDRED TWENTY Dollars & 80/100

6. Conditions All conditions, benefits and provisions stated on the subsequent pages are hereby made a part of this policy.

7. Date With respect to policy values and participation in profits, this policy shall be deemed to be dated the 31st day of December 1934

Issued at Cincinnati, Ohio, this 31st day of December 1934

Richard S. Best
Secretary

W. Howard Cox
President

Samuel J. Best
Register

© 1934 A. B. 1 (1)
MADE IN U. S. A.

Single Premium Life
Annual Dividends

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 3

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Section A.
Beneficiary and Ownership Provisions.

A 1. CHANGE OF BENEFICIARY. The insured shall have the right at any time, and from time to time, to change the beneficiary, by written notice in form acceptable to the Company, which will be furnished on request.

A 2. OWNERSHIP. The insured may exercise every right and receive every benefit reserved to the insured or the owner of the policy, including the right of assignment, and may agree with the Company to any change in or amendment of the policy, without the consent of any beneficiary except as may be otherwise provided in appointing such beneficiary.

A 3. BENEFICIARY. The net sum payable at the death of the insured shall be paid to the executor, administrators or assigns of the insured.

ABEIL
MPSTW 3d Net Ins. With Change.

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 4

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Section B—Premiums and Dividends.

B 1. PAYMENT OF PREMIUM. The premium shall be payable in advance, either at the Home Office, or to an authorized agent of the Company on delivery of a receipt signed by the President or Secretary and countersigned by such agent.

B 2. DIVIDENDS. This policy shall participate in profits as apportioned by the Company. Beginning at the end of the first policy year dividends shall be declared annually during its continuance.

B 3. DIVIDEND OPTIONS. The dividend for any year may be withdrawn in cash; or left to accumulate with interest compounded annually at three per cent, increased

from profits as apportioned by the Company, until the maturity of the policy, subject to withdrawal at any time; or applied to the purchase of paid-up non-participating additions to the policy, convertible into cash at any time for the reserve of the additions.

B 4. AUTOMATIC DISBURSEMENT. If the owner of this policy shall not exercise any other such option the dividend shall be applied, on the expiration of thirty-one days after the anniversary of the policy, to the purchase of paid-up additions. At the death of the insured during the continuance of the policy, the pro rata part of the dividend for the current policy year and accumulations of dividends at interest shall be paid with the policy.

Section C—Policy Values.

C 1. RESERVE BASIS. The reserve of this policy is computed on the American Experience Table of Mortality with interest at $2\frac{1}{4}\%$.

C 2. SURRENDER VALUE. The surrender value for each thousand dollars of insurance is equal to the reserve at the end of the policy year, omitting costs, less surrender charges in the first to the ninth policy years inclusive, of \$30, \$31, \$14, \$12, \$10, \$8, \$6, \$4 and \$3 respectively.

C 3. POLICY VALUES. The surrender value, less any indebtedness or advances on the policy, may be used at the option of the owner of the policy in either of the following ways as set forth in the table below.

C 4. OPTION 1—LOAN. Borrowed or taken in advance in whole or in part on the sole security of the policy, on assignment thereof, less any indebtedness and previous advances on this policy, at six per cent interest payable

annually on the anniversary of the policy, interest to be discounted and paid in advance (Table 1).

Failure to repay any such advance or to pay interest shall avoid this policy whenever but not until the total indebtedness and advances hereon with interest shall equal or exceed the then loan value and not until one month after notice shall have been mailed by the Company to the last known address of the insured, and of the assignee, if any.

The loan value will be increased by the value of any paid-up additions.

Consummation of loans other than to pay premiums on policies in this Company may be deferred by the Company sixty days from the date of application therefor.

C 5. OPTION 2—CASH. Withdrawn in cash on legal surrender of the policy (Table 2). The cash value will be increased by the value of any paid-up additions. Payment may be deferred by the Company sixty days from the date of application therefor.

Table of Values.

The values in these tables are on the basis of \$1,000 of insurance. If this policy is for insurance of more or less than \$1,000, the values are increased or reduced proportionately.

1. Loan, less interest to the next anniversary, available at any time during the policy year; or
2. Cash, available at the end of the policy year.

1st year	2nd year	3rd year	4th year	5th year	6th year	7th year
\$ 739	\$ 756	\$ 776	\$ 789	\$ 800	\$ 812	\$ 824
8th year	9th year	10th year	11th year	12th year	13th year	14th year
\$ 858	\$ 847	\$ 839	\$ 838	\$ 837	\$ 836	\$ 835
15th year	16th year	17th year	18th year	19th year	20th year	25th year
\$ 904	\$ 915	\$ 921	\$ 929	\$ 936	\$ 943	\$

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 5

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Section D—Settlement Options.

D1. SETTLEMENT OPTIONS. The owner of this policy, or the payee after the insured's death, or prior election having been made, may elect, by written notice to the Company at its Home Office, in form acceptable to the Company, which will be furnished on request, to have the net sum payable under this policy paid in any one of the following ways in lieu of a single sum.

D2. OPTION 1—CUMULATIVE INSTALLMENTS. In equal annual installments for any specified number of years (not exceeding twenty-five), the first installment being payable immediately, in accordance with the following table for each one thousand dollars of net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as accumulated by the Company.

Number of Installments	Minimum Amt. of Each Installment	Number of Installments	Minimum Amt. of Each Installment
1	\$507.26	24	\$66.36
2	253.63	25	61.28
3	169.09	26	57.29
4	126.82	27	53.74
5	103.65	28	50.39
6	89.51	29	47.18
7	78.51	30	44.16
8	69.51	31	41.28
9	62.51	32	38.59
10	56.51	33	36.04
11	51.26	34	33.61
12	46.51	35	31.28
13	42.26	36	29.04
14	38.51	37	26.89
15	35.26	38	24.84
16	32.51	39	22.89
17	30.26	40	21.04
18	28.51	41	19.29
19	26.76	42	17.64
20	25.01	43	16.09
21	23.26	44	14.64
22	21.51	45	13.29
23	19.76	46	12.04
24	18.01	47	10.89
25	16.26	48	9.84
26	14.51	49	8.89
27	12.76	50	8.04
28	11.01	51	7.29
29	9.26	52	6.64
30	7.51	53	6.09
31	5.76	54	5.64
32	4.01	55	5.19
33	2.26	56	4.84
34	0.51	57	4.49
35		58	4.14
36		59	3.89
37		60	3.64
38		61	3.39
39		62	3.14
40		63	2.89
41		64	2.64
42		65	2.39
43		66	2.14
44		67	1.89
45		68	1.64
46		69	1.39
47		70	1.14
48		71	0.89
49		72	0.64
50		73	0.39
51		74	0.14
52		75	
53		76	
54		77	
55		78	
56		79	
57		80	
58		81	
59		82	
60		83	
61		84	
62		85	
63		86	
64		87	
65		88	
66		89	
67		90	
68		91	
69		92	
70		93	
71		94	
72		95	
73		96	
74		97	
75		98	
76		99	
77		100	

D3. OPTION 2—CURRENT INSTALLMENTS. In equal annual installments, the first installment being payable immediately, for a period of five (5), ten (10) or twenty (20) years certain, and for as long thereafter as the payee shall survive, in accordance with the following table for each one thousand dollars of net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as accumulated by the Company, but not beyond the period of certain installments. The Company may require due proof that the payee is living before the payment of each or any installment hereunder is made.

Number, Age of Payee When Policy Commences		Minimum Amount of Each Installment	
Male	Female	Installments Certain	Installments Certain
10	10	\$44.89	\$41.74
11	11	44.89	41.74
12	12	44.89	41.74
13	13	44.89	41.74
14	14	44.89	41.74
15	15	44.89	41.74
16	16	44.89	41.74
17	17	44.89	41.74
18	18	44.89	41.74
19	19	44.89	41.74
20	20	44.89	41.74
21	21	44.89	41.74
22	22	44.89	41.74
23	23	44.89	41.74
24	24	44.89	41.74
25	25	44.89	41.74
26	26	44.89	41.74
27	27	44.89	41.74
28	28	44.89	41.74
29	29	44.89	41.74
30	30	44.89	41.74
31	31	44.89	41.74
32	32	44.89	41.74
33	33	44.89	41.74
34	34	44.89	41.74
35	35	44.89	41.74
36	36	44.89	41.74
37	37	44.89	41.74
38	38	44.89	41.74
39	39	44.89	41.74
40	40	44.89	41.74
41	41	44.89	41.74
42	42	44.89	41.74
43	43	44.89	41.74
44	44	44.89	41.74
45	45	44.89	41.74
46	46	44.89	41.74
47	47	44.89	41.74
48	48	44.89	41.74
49	49	44.89	41.74
50	50	44.89	41.74
51	51	44.89	41.74
52	52	44.89	41.74
53	53	44.89	41.74
54	54	44.89	41.74
55	55	44.89	41.74
56	56	44.89	41.74
57	57	44.89	41.74
58	58	44.89	41.74
59	59	44.89	41.74
60	60	44.89	41.74
61	61	44.89	41.74
62	62	44.89	41.74
63	63	44.89	41.74
64	64	44.89	41.74
65	65	44.89	41.74
66	66	44.89	41.74
67	67	44.89	41.74
68	68	44.89	41.74
69	69	44.89	41.74
70	70	44.89	41.74
71	71	44.89	41.74
72	72	44.89	41.74
73	73	44.89	41.74
74	74	44.89	41.74
75	75	44.89	41.74
76	76	44.89	41.74
77	77	44.89	41.74
78	78	44.89	41.74
79	79	44.89	41.74
80	80	44.89	41.74
81	81	44.89	41.74
82	82	44.89	41.74
83	83	44.89	41.74
84	84	44.89	41.74
85	85	44.89	41.74
86	86	44.89	41.74
87	87	44.89	41.74
88	88	44.89	41.74
89	89	44.89	41.74
90	90	44.89	41.74
91	91	44.89	41.74
92	92	44.89	41.74
93	93	44.89	41.74
94	94	44.89	41.74
95	95	44.89	41.74
96	96	44.89	41.74
97	97	44.89	41.74
98	98	44.89	41.74
99	99	44.89	41.74
100	100	44.89	41.74

*Age 5 used under.
A B C—B (C)
100

Number, Age of Payee When Policy Commences		Minimum Amount of Each Installment	
Male	Female	Installments Certain	Installments Certain
10	10	\$44.89	\$41.74
11	11	44.89	41.74
12	12	44.89	41.74
13	13	44.89	41.74
14	14	44.89	41.74
15	15	44.89	41.74
16	16	44.89	41.74
17	17	44.89	41.74
18	18	44.89	41.74
19	19	44.89	41.74
20	20	44.89	41.74
21	21	44.89	41.74
22	22	44.89	41.74
23	23	44.89	41.74
24	24	44.89	41.74
25	25	44.89	41.74
26	26	44.89	41.74
27	27	44.89	41.74
28	28	44.89	41.74
29	29	44.89	41.74
30	30	44.89	41.74
31	31	44.89	41.74
32	32	44.89	41.74
33	33	44.89	41.74
34	34	44.89	41.74
35	35	44.89	41.74
36	36	44.89	41.74
37	37	44.89	41.74
38	38	44.89	41.74
39	39	44.89	41.74
40	40	44.89	41.74
41	41	44.89	41.74
42	42	44.89	41.74
43	43	44.89	41.74
44	44	44.89	41.74
45	45	44.89	41.74
46	46	44.89	41.74
47	47	44.89	41.74
48	48	44.89	41.74
49	49	44.89	41.74
50	50	44.89	41.74
51	51	44.89	41.74
52	52	44.89	41.74
53	53	44.89	41.74
54	54	44.89	41.74
55	55	44.89	41.74
56	56	44.89	41.74
57	57	44.89	41.74
58	58	44.89	41.74
59	59	44.89	41.74
60	60	44.89	41.74
61	61	44.89	41.74
62	62	44.89	41.74
63	63	44.89	41.74
64	64	44.89	41.74
65	65	44.89	41.74
66	66	44.89	41.74
67	67	44.89	41.74
68	68	44.89	41.74
69	69	44.89	41.74
70	70	44.89	41.74
71	71	44.89	41.74
72	72	44.89	41.74
73	73	44.89	41.74
74	74	44.89	41.74
75	75	44.89	41.74
76	76	44.89	41.74
77	77	44.89	41.74
78	78	44.89	41.74
79	79	44.89	41.74
80	80	44.89	41.74
81	81	44.89	41.74
82	82	44.89	41.74
83	83	44.89	41.74
84	84	44.89	41.74
85	85	44.89	41.74
86	86	44.89	41.74
87	87	44.89	41.74
88	88	44.89	41.74
89	89	44.89	41.74
90	90	44.89	41.74
91	91	44.89	41.74
92	92	44.89	41.74
93	93	44.89	41.74
94	94	44.89	41.74
95	95	44.89	41.74
96	96	44.89	41.74
97	97	44.89	41.74
98	98	44.89	41.74
99	99	44.89	41.74
100	100	44.89	41.74

D4. OPTION 3—RETIRED AT DEATH. Retained by the Company at three per cent interest payable annually during the lifetime of the payee. The principal sum and accrued interest may be withdrawn at any time, on sixty days' notice, unless otherwise specified in electing such option. If desired, interest will be paid in semi-annual, quarterly or monthly parts of equivalent value, beginning at month, three months or one month, respectively, after the death of the insured. Interest payments will be increased from profits as apportioned by the Company.

D5. OPTION 4—FIXED INCOME. In equal annual installments, the first installment payable immediately, each of such amount as may be elected, continuing until the said net sum and interest are exhausted, provided that the first installment shall include any balance of less than one installment. On each anniversary of the first installment, interest on the unpaid balance will be added thereto at three per cent per annum, increased from profits as apportioned by the Company. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount.

D6. MINIMUM INSTALLMENTS. If the payment of installments is requested in semi-annual, quarterly or monthly parts of the annual installments provided for by the terms of any of the above options and such semi-annual, quarterly or monthly payments would necessitate payments of less than Ten Dollars (\$10.00), the Company reserves the right to make payments at less frequent intervals, and if under any option elected the annual installments would amount to less than Ten Dollars (\$10.00), the Company reserves the right to pay the amount due in a single sum to the payee then entitled to receive installments under the terms of the election.

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 6

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Section E—General Privileges and Conditions.

E1. CONTRACT. This policy, together with the application, a copy of which is attached hereto, shall constitute and contain the entire contract. All statements shall, in the absence of fraud, be deemed representations and not warranties. No such statement shall void this policy or be used in defense to a claim thereunder, unless it is contained in the written application, and unless a copy of such application is attached to the policy when issued.

E2. INCONTINGENTABILITY. This policy shall be incontestable after two years from the date of issue except for non-payment of premium, and except as to provisions, if any, relating to benefits in the event of disability or granting additional insurances in event of death by accidental means.

E3. AGE. In the event of the age of the insured being misstated, the amount payable shall be such as the premiums paid would have purchased at the correct age.

E4. SUICIDE. Suicide within two years from the date of issue of this policy, whether the insured was sane or insane, is a risk not assumed hereunder and the amount payable shall be a sum equal to the premium paid in cash hereto.

E5. AUTHORITY. None of the terms of this policy shall be modified, nor any forfeiture under it waived, save by an agreement in writing, signed by the President, a Vice-President, the Secretary or an Assistant Secretary, whose authority for this purpose shall not be delegated.

Exhibit A Annexed to Stipulation

• Policy No. 1,225,190 of the Union Central Insurance Company.

(Photostat Opposite) •

Sheet 7

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1. a. Full name of applicant: FLORENCE JAGGEMHEIN FORM No. 431A

b. Residence { No. 1 or R. F. D. No. 1 } Street Port Washington City of Port Washington County of Richmond

State of N.Y. How long have you lived there? 18 years & present residence Edison St. 126 P. O. Address for notices 126 Edison St. N.Y.C.

f. Names and addresses of all firms or persons by which you are employed:

2. Give place and date of birth. Town Philadelphia County Philadelphia State Penn.

Mo. Sept Day 3 Yr. 1863 Age nearest birthday 71

3. a. Amount of insurance: \$ 200,000.00 Plan Whole Life Disability: Waiver ☐ Death ☐ Premiums Single 169108 Plan (3) with other insurance ☐ (Regular) (Disability Benefits) \$ 130.00 Annually ☐ Semi-annually ☐ Quarterly ☐ (Double Indemnity) \$ 150.00 With Extra Term ☐ With Pro Rata Premium ☐ Policy to be endorsed in usual manner. ☐ Indicate if other method is desired.

b. Dividends: to reduce premiums ☐ to purchase additions ☐ or at interest ☐ Cash

4. a. Primary Beneficiary Catkins (Print name as it is to appear in the policy.)

b. Relationship to applicant Wife c. Birthday of Beneficiary: Yr. 1863 Mo. 10 Day 10 (This over)

d. Contingent Beneficiary Catkins (Print name as it is to appear in the policy.)

e. Relationship to applicant Wife

Ownership and privilege: to change the beneficiary shall vest in (a) the insured, (b) primary beneficiary, (c) the insured and primary beneficiary jointly. Rule out all except one of (a), (b) and (c).

5. a. How many auto? Rights (including glider) have you made in the last 12 months? none In the last 24 months? none

b. Do you expect to make auto (including glider) rights as manager or otherwise? no

6. a. Have you ever applied to this company for insurance? no b. Name of Company WNL Amount 1053906 Plan Whole Life Date 10/10/36

b. What insurance do you now carry in other companies? (If none, so state). none

c. What insurance in this or any other company will be discontinued, reduced or changed if insurance now applied for is issued? yes - Mutual Equitable Life

d. Have you applied, or have you a present intention to apply, for other insurance in any other company? (If not, so state.) yes - Mutual Equitable Life

7. a. Has first premium been paid? yes b. If so, state the amount paid, as follows: 1053906

c. I have received the premium for payment of \$ 1053906 which I have received binding receipt form 431 A, to the terms of which I agree.

It is agreed that any insurance issued on this application shall not take effect until the policy has been delivered to the applicant and the first premium thereon has been paid and accepted by the Company or its authorized agent during the applicant's lifetime and good health; provided, however, that if the applicant pays the first premium in advance and so declares at Question 7 hereof and receives therefor binding receipt in the form attached hereto (which is the only form of receipt for payment of first premium in advance authorized by the Company) the terms of said binding receipt shall apply. I also agree that payment of the first premium shall keep the insurance in force only to the date fixed in the policy for payment of the next premium.

I agree to be examined by the Company's Medical Examiner, and that my statements in this application and to the Medical Examiner are made for the purpose of obtaining this insurance. I understand that any note accepted by the Company in connection with the first year's premium must be secured to its satisfaction.

Samuel Metzger District Agent (If any) 1225190

THE OBAS & KNIGHT AGENCY, INC. Dated at New York this 27 day of Dec 1936

General Agent or Manager. Signature of Applicant Theresa Bufford

© 431 A 2-33 N.Y. P. SEE QUESTIONS ON REVERSE

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 8

Agents are not authorized to Grant Premiums
Make or Alter Contracts or Withdraw Premiums

THE UNION CENTRAL LIFE INSURANCE COMPANY

RECEIVED one hundred nine thousand nine hundred twenty & 20/100
DOLLARS, \$109,920.20

being the amount of premium (including premiums for Disability and Double Indemnity Benefits, if any) upon

Policy No. 1225190, issued upon the life of FLORENCE GUGGENHEIM

This receipt is not valid unless Premium is paid, and the

amount is acknowledged and dated on the day of payment by

The Charles B. Knight Agency

of such place as to be indicated below.

Authority to accept payment is given on my

signature to receipt therefor is hereby given

Charles B. Knight

President of the Union Central Life Insurance Co.

Paid at

the day of

19

AGENT

Richard S. Ruse
Secretary

THE UNION CENTRAL LIFE INSURANCE CO.

Exhibit A Annexed to Stipulation

Policy No. 1,225,190 of the Union Central Insurance
Company.

(Photostat Opposite)

Sheet 9

Avoid unnecessary expense by communicating with the Co. or its Agent relative to any settlement under this policy.

1225190

**THE UNION CENTRAL
LIFE INSURANCE COMPANY**

CINCINNATI, OHIO

Insurance on the Life of

Florence Gugenheim

Amount \$ 130,000.00

Date of Issue December 31, 1934

Premium \$ 102,920.20

The Charles B. Knight Agency Agent
Gen'l Agt.

Kind

4231 A
Edition 1934

Single Premium Life
Annual Dividends

EXHIBIT "B" ANNEXED TO STIPULATION

Policy No. 462,569 of the Connecticut General Insurance
Company.

(Photostat Opposite)

Sheet 1

(To be used when all rights are to be transferred)

ABSOLUTE ASSIGNMENT OF POLICY

For One Dollar, and other valuable considerations, receipt of which is acknowledged, I hereby assign,

and set over absolutely unto

ROBERT GUGGENHEIM

Address: St. and No.

State of

No. 462569 issued by the Connecticut General Life Insurance Company, of Hartford, Con-

necticut, upon the life of

Flora Guggenheim

with all my right, title, and interest thereunder, including the right to surrender the policy to the

Company for its cash value at any time and the right to exercise all the other options and privileges and to

all benefits granted under the terms of the policy, all without my consent, or without notice to me.

I certify that all assignors hereof are twenty-one years of age or over.

at New York N.Y. this 27 day of Dec 1934

Flora Guggenheim

Recorded and filed at the Home Office of the Connecticut General Life Insurance Company, at Hartford,

Connecticut, this 31 day of December, 1934

Assistant Secretary

NOTICE

This form of assignment is offered solely for the convenience of our insured; the Company will record and file any form submitted but in no way guarantees the validity or sufficiency of this or any other assignment.

Assignments should be executed in duplicate and BOTH copies forwarded immediately to the Home Office, at Hartford, Conn. After the assignment has been recorded and filed, one copy will be returned to be attached to the policy. No assignment is valid until a copy thereof has been recorded and filed at its Home Office.

There is a named beneficiary under this policy (that is, one other than the estate, or the executors, administrators or assigns named), such beneficiary should join in the assignment. If a policy is assigned to a minor, the Company will treat with only through a legally appointed guardian, acting under Court Order.

Tightly Bound

Exhibit B Annexed to Stipulation

2

Policy No. 462,569 of the Connecticut General Insurance
Company.

(Photostat Opposite)

Sheet 2

Connecticut General Life Insurance Company Hartford, Conn.

NO. 462569

AGE 71



Hereby insures the Life of

FLORENCE GUGGENHEIM

(hereinafter called the Insured) and agrees to pay at its Home Office in Hartford, Connecticut:

ONE HUNDRED THOUSAND DOLLARS

to

the executors, administrators or assigns of the Insured,

(hereinafter called the Beneficiary), upon receipt of due proofs of the death of the Insured during the continuance of this contract. The right is reserved to the Insured to change the Beneficiary from time to time as hereinafter provided.

The consideration for this insurance is the application, a copy of which is attached hereto, and made a part of this contract, and the payment in advance of the single premium of \$ 77,784.00

This policy is issued and accepted subject to all the conditions and privileges set forth on the subsequent pages hereof, which are hereby made a part of this contract.

IN WITNESS WHEREOF the Connecticut General Life Insurance Company has caused this contract to be executed at its office in the city of Hartford, the 27th day of December 1934.

J. B. Wilde
Vice President and Secretary

A. M. Livingston
President

A. M. Livingston
Superior Life Department

Exhibit B Annexed to Stipulation

Policy No. 462,569 of the Connecticut General Insurance Company.

(Photostat Opposite)

Sheet 3

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BENEFITS AND PROVISIONS

Payment of Premium. The single premium is due and payable in advance at the Home Office or to an authorized agent of the Company in exchange for the Company's receipt signed by the President or Secretary and countersigned by the agent designated therein.

This policy shall not take effect until the policy has been delivered and the single premium paid as above provided, during the lifetime and good health of the insured.

Non-participation. This policy is not entitled to share in surplus dividends.

Insurability. This policy shall be insurable after it has been in force during the lifetime of the insured for two years from its date of issue, except for non-payment of premium, and except as to provisions and conditions relating to benefits in event of total and permanent disability and those granting additional benefits specifically in event of death from accident, if any; but if the age of the insured be advanced, the total liability of the Company shall be the amount of insurance which the total premium paid would have purchased at the correct age.

Reversion. If within two years from the date of issue of this policy, the insured shall die by his own hand or act, whether sane or insane, the liability of the Company shall be limited to the premium paid.

Rights reserved as to the insured. If the right to change the Beneficiary is reserved to the insured, then, subject to the rights of any Assignee of record with the Company, the insured alone, without the consent of any Beneficiary as to whom such right has been reserved, may resign, release or surrender this policy to the Company, and exercise any and all other rights and privileges thereunder, or agree with the Company to any change in or amendment to the policy.

Beneficiary. Subject to the rights of any Assignee of record with the Company, a new Beneficiary may be designated from time to time by filing at the Home Office of the Company a written request therefor on a form provided by the Company and signed by the insured (or by the insured and any Beneficiary as to whom the right to change the Beneficiary has not been reserved to the insured). No change of Beneficiary shall take effect until such change shall have been approved in writing by the Company, but when so approved, whether the insured be then living or not, it shall relate back and take effect as of the date of execution of written request therefor, but without prejudice to the Company on account of any payment made by it before such approval. Any assignment of this policy by the insured shall operate so long as such assignment remains in force, and to the extent claimed, to transfer the interest of any Beneficiary as to whom the insured has reserved the right to change the Beneficiary.

Unless otherwise provided herein or agreed in writing by the Company, the interest of any deceased Beneficiary shall pass to the surviving Beneficiary or Beneficiaries, if any; otherwise to the executor, administrator or assign of the insured.

Assignment. The Company shall not be affected by any assignment of this policy until the original assignment or certified copy thereof shall be delivered at its Home Office; and the Company does not assume responsibility for the validity or sufficiency of any assignment.

Loan. At any time during the continuance of this policy the Company will loan, upon the sole security and satisfactory assignment of the policy and the execution of proper loan agreement, a sum which with interest shall not exceed the cash value at the next policy anniversary on such anniversary date of the policy. The Company may, at its option, for a period not exceeding sixty days from date of application therefor, refuse to repay such loan or to pay interest thereon, and shall not yield the policy unless the total liabilities thereon to it; Company shall equal or exceed the cash value at the time of such loan, or may until thirty-one days after notice shall have been mailed by the Company to the last known address of the insured and of the Assignee of record with the Company, if any.

Cash Value. Upon legal surrender of the policy at its Home Office, the Company will pay a cash value of the amount set forth in the Table of Cash or Loan Values.

The Company may defer payment of any cash value hereunder for a period not exceeding sixty days from date of application therefor.

Settlement of Policy. Before settlement under this policy is made, proofs of loss must be submitted on forms furnished by the Company, at the time of making any loan or interest any indebtedness hereunder with interest, from the proceeds. The Company may require the policy to be delivered at its Home Office before any settlement thereunder is made.

General Provisions. This policy and the application therefor constitute the entire contract between the parties and all statements made in the application shall, in the absence of fraud, be deemed representations and not warranties. No statement shall be regarded in evidence of a claim under this policy unless it is contained in the written application and a copy of this application is attached to the policy when issued.

Only the President, Vice President, Secretary or Assistant Secretary has power in behalf of the Company to make or modify this contract of insurance.

Exhibit B Annexed to Stipulation

Policy No. 462,569 of the Connecticut General Insurance
Company.

(Photostat Opposite)

Sheet 4

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TABLE OF CASH OR LOAN VALUES

Per Each \$1,000		Per Each \$1,000	
Policy in Force at: Pay Year	Pay Year	Policy in Force at: Pay Year	Pay Year
1	11	11	21
2	12	12	22
3	13	13	23
4	14	14	24
5	15	15	25
6	16	16	26
7	17	17	27
8	18	18	28
9	19	19	29
10	20	20	30

The above table is based on a policy of \$1,000 free from indebtedness. Any loan shown against the policy will reduce the values shown. All cash or loan values herein are based on the American Experience Table of Mortality with interest at the rate of 3 1/2% per annum. Beginning with the end of the third policy year no deduction from the reserve of more than 3 1/2% of the amount loaned has been made in computing the values hereunder. The values for the first month and subsequent policy years are equivalent to the first reserve.

OPTIONAL METHODS OF SETTLEMENT

The Company may at its election agree in writing with the then legal owner to pay the proceeds of the policy in accordance with one or more of the following options:

Option A. In a definite number of installments, first payment immediately, as follows:

Number of Years during which installments will be paid		Amount of each installment		Number of Years during which installments will be paid		Amount of each installment	
Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly
1	\$1,000	\$1,000	\$84.75	9	\$137.78	\$80.00	\$6.77
2	500	500	42.38	10	105.91	70.00	6.46
3	333	333	28.25	11	80.86	60.00	6.20
4	250	250	22.37	12	67.41	50.00	5.97
5	200	200	17.91	13	56.18	40.00	5.75
6	167	167	14.91	14	46.82	30.00	5.55
7	143	143	12.58	15	38.99	20.00	5.36
8	125	125	10.94	16	32.33	10.00	5.18
9	111	111	9.50	17	26.61	0.00	5.01
10	100	100	8.48	18	21.61	0.00	4.85

Option B. In a definite number of monthly installments, first payment immediately, and as long thereafter as the payee survives, the amount of the installments being determined by the age of the payee at date of payment of the first installment, as follows:

Number of Installments Certain		Age of Payee at Date of First Installment		Number of Installments Certain		Age of Payee at Date of First Installment	
60	120	60	120	60	120	60	120
10 or under	32.75	32.75	32.75	10 or under	32.75	32.75	32.75
11	27.75	27.75	27.75	11	27.75	27.75	27.75
12	24.75	24.75	24.75	12	24.75	24.75	24.75
13	22.75	22.75	22.75	13	22.75	22.75	22.75
14	21.25	21.25	21.25	14	21.25	21.25	21.25
15	20.00	20.00	20.00	15	20.00	20.00	20.00
16	18.75	18.75	18.75	16	18.75	18.75	18.75
17	17.50	17.50	17.50	17	17.50	17.50	17.50
18	16.25	16.25	16.25	18	16.25	16.25	16.25
19	15.00	15.00	15.00	19	15.00	15.00	15.00
20	13.75	13.75	13.75	20	13.75	13.75	13.75
21	12.50	12.50	12.50	21	12.50	12.50	12.50
22	11.25	11.25	11.25	22	11.25	11.25	11.25
23	10.00	10.00	10.00	23	10.00	10.00	10.00
24	8.75	8.75	8.75	24	8.75	8.75	8.75
25	7.50	7.50	7.50	25	7.50	7.50	7.50
26	6.25	6.25	6.25	26	6.25	6.25	6.25
27	5.00	5.00	5.00	27	5.00	5.00	5.00
28	3.75	3.75	3.75	28	3.75	3.75	3.75
29	2.50	2.50	2.50	29	2.50	2.50	2.50
30	1.25	1.25	1.25	30	1.25	1.25	1.25

Option C. As a deposit at interest. The Company will retain the proceeds and pay interest thereon.

Option D. In installments of specified amounts, first payment immediately, until the proceeds with any interest thereon are exhausted. These options are based on a guaranteed rate of 3 1/2% compound interest per annum, but, at the sole discretion of the Company, such interest may be paid or credited at the date of any installment.

Exhibit B Annexed to Stipulation

Policy No. 462,569 of the Connecticut General Insurance
Company.

(Photostat Opposite)

Sheet 5

FORM NO. 1-1-55 (1-55)

BLACK INK

PART I. APPLICATION FOR INSURANCE IN

Connecticut General Life Insurance Company

Nº 25685

JOHN

Is your full name? Blanche Suzanne
Place of birth? Chicago, Ill. Date of birth? 1912 Age last birthday? 41
Sex? Female Marital status? Married City Chicago State Ill.
Address of business? Post Office Box 1000 City Chicago State Ill.
Which address shall premium notices be sent? Post Office Box 1000
Do you have any unpaid premiums during the last five years? No
Is beneficiary in case of your death? Charles
Do you desire to retain the right of changing the beneficiary? No
Is beneficiary a corporation or partnership? (If check)
If beneficiary is a corporation or partnership shall the beneficiary have full power to exercise any option and to receive any and all payments under policy, including maturity payment if an endorsement policy without removal of the insured?
Do you have full names of all partners?

1. In insuring insurance desired? Yes 2. If death benefit can be reduced in reduction of premium, how shall they be applied?
3. Have you ever applied to this or any other company or association for life, accident or health insurance which has not been granted, or which was postponed or modified in kind, amount or rate?
4. Has any policy issued to you been cancelled by any company or the insured through default?
5. If (3) or (4) is answered in the affirmative, give particulars.
6. Have you ever had any claim under any Accident or Health Policy? (If so, give for each claim date, name and name of company.)
7. Have you ever taken an oath of flight?
8. Do you contemplate taking an oath of flight?
(If (7) or (8) is answered in the affirmative, do include supplemental oath.)
9. Are you applying for other Life Insurance? Yes Amount 1000
If it is a different company or double indemnity type, please specify.
10. What is the total amount of insurance in force on your life? None
Amount of Life Insurance in force: Life, Term, Endowment, etc. To what Co.

Do you have any other insurance? None
Have you ever been so engaged?
Do you have any other duties?
What is the name and kind of business of Firm or Employer?
What are your former occupations? None
Your Cost 100,000 Periodically or Estimated Cost?
Is it Indemnity - Yes or No? No Classification
Are you payable amount 100,000 quarterly or yearly?
Do you shall policy have if other insurance?

11. What is the total amount of insurance in force on your life? None
Amount of Life Insurance in force: Life, Term, Endowment, etc. To what Co.
12. Do you have any other insurance? None
13. Have you ever been so engaged?
14. Do you have any other duties?
15. What is the name and kind of business of Firm or Employer?
16. What are your former occupations? None
17. Your Cost 100,000 Periodically or Estimated Cost?
18. Is it Indemnity - Yes or No? No Classification
19. Are you payable amount 100,000 quarterly or yearly?
20. Do you shall policy have if other insurance?

Do you not yearly receive for the past three years including interest from investments credited by 10% the aggregate indemnity payable for disability under all other policies now carried by you?
Do you not in this or any other Company be discontinued if insurance was applied for in insur? (If so, give full particulars)
We hereby declare and agree that you have read the above questions and answers, that they are complete and true, and shall form a part of any contract or agreement between us, that no information supplied by any representative of the Company shall have been omitted or altered, and that no agent or representative shall have the Company's name in writing and signed by the President, a Vice President, the Secretary or an authorized officer in Hartford is acceptable under its rules and practices, and unless a policy is issued clearly as herein applied for there shall be no part of the Company on account of this payment and the same shall be returned upon surrender of the receipt therefor.

3 Commenced at New York on 17 day of Age
Blanche Suzanne m 76 cat Blanche Suzanne
Signature of Applicant

Tightly Bound

Exhibit B Annexed to Stipulation

Policy No. 462,569 of the Connecticut General Insurance Company.

(Photostat Opposite)

Sheet 6

**Connecticut General
Life Insurance Company
Hartford, Conn.**

FLORENCE GUGGENHEIM

Policy No. 462569

Amount \$ 100,000

Date December 27, 1974.

Single premium \$ 77,784.

Single Premium Life Policy—Non-Participating

mas

EXHIBIT "C" ANNEXED TO STIPULATION

Policy No. 12,486,936 of the New York Life Insurance Company.

(Photostat Opposite)

Sheet 1

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ASSIGNMENT

NOTE.—IN THE EVENT OF ASSIGNMENT, THE COMPANY SUGGESTS: That in all the cases "Beneficiary" should join in the assignment, if it be a minor, the beneficiary's interest can be assigned only by the beneficiary's legally appointed guardian who must secure court authority to make the assignment from the Court, appointing him as guardian, in which event a certified copy of the appointment and of such authority should accompany the assignment. When an assignment is made by an "Executor or Administrator" an Official Court Certificate showing the appointment of such Executor or Administrator should be filed with the assignment. When an assignment is executed by an "Attorney in Fact" of a Corporation the seal of the Corporation should be attached. The corporate books of the Board of Directors or the Secretary should be used and a certified copy of the minutes of the meeting of the Board of Directors or the Secretary should be attached to the assignment. If action executing the assignment is taken with, and along with a "W-2" signature MUST be witnessed by TWO witnesses, in addition to the assignor.

For Value Received, Frederick M. Johnson hereby assigns and transfers unto Elizabeth M. Johnson (Give Full True Name and Address)

the Policy of Insurance known as No. 12486-936 issued by the
NEW YORK LIFE INSURANCE COMPANY
upon the life of Elizabeth M. Johnson of New York City
and all dividend, benefit and advantage to be had or derived therefrom, subject to the conditions of the said Policy, and the Rules and Regulations of the Company, and to any indebtedness to the New York Life Insurance Company against said Policy.

Elizabeth M. Johnson
Elizabeth M. Johnson

Witness my hand and seal this 19 day of December
thirteen hundred thirty four
Elizabeth M. Johnson
State of New York
County of New York

On this 19 day of December, 1934, before me personally came Elizabeth M. Johnson and who presented the foregoing assignment, and acknowledged that it represented the said Elizabeth M. Johnson
NOTARY PUBLIC NEW YORK COUNTY
CLERK'S NO. 53 MONROE ST. 5-43
COMMISSION EXPIRES MARCH 30, 1935

The NEW YORK LIFE INSURANCE COMPANY, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

New York, DEC 29 1934 19 For: Frederick M. Johnson, Secretary

NOTICE.—The rules of the Company require that assignments of Policies issued by it shall be made in conformity with the rules of the Company, and that no assignment shall be valid unless it is made in conformity with the rules of the Company. The Company has no responsibility for the validity of any assignment. The assignment must be made before an Officer duly authorized to administer oaths, under his official seal; in the absence of a seal, his authority and the genuineness of his signature must be attested by the Clerk of the Court of Record under his official seal.

THIS SPACE RESERVED FOR SEARCHE OFFICE USE ONLY

Premium on Policy paid to? _____

Was Policy delivered? _____ If so, what settlement was made? _____

Cashier, W. J.

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

(Photostat Opposite)

Sheet 2

CORPORATE ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____) ss.

On the _____ day of _____, 19____, before me
personally came _____ to me
_____ who, being by me duly sworn, did depose and say that he resides in _____
that he is the _____ of the _____
corporation described in and which executed the instrument on the reverse side hereof; that he knows
the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so
affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by
like order.

(Notary sign here) _____

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

(Photostat Opposite)

Sheet 3

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NEW YORK FIDELITY AND GUARANTEE COMPANY

AGREES TO PAY

TO THE EXECUTORS, ADMINISTRATORS OR ASSIGNS OF THE INSURED, OR TO

THE POLY DESIGNATED 250 Beneficiary
(with right on the part of the insured to change the Beneficiary in the manner provided herein)

*** ONE HUNDRED THOUSAND *** Dollars
(this sum or less subject to the order of the insured)

upon receipt of due proof of the death of

... FLORENCE OUGORCHIN ... the Insured.

Such sum will be increased by any outstanding dividend additions and dividend deposits as provided herein.

This contract is made in consideration of the application therefor and of the payment in advance of the single premium of Eighty-four thousand five hundred twenty-eight Dollars, to be made only by bank draft or certified check to the order of New York Life Insurance Company, in exchange for its official pension receipt dated by the President, a Vice-President, a Second Vice-President, a Third Vice-President, a Secretary or the Treasurer of the Company and countersigned by the Cashier of its Branch Office.

This Policy takes effect as of the Twenty-Ninth day of December Nineteen Hundred and Twenty-Seven, which day is the anniversary of the Policy.

THE BENEFITS AND PROVISIONS stated or written by the Company on the following pages are a part of this contract as fully set forth they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Twenty-Ninth day of December Nineteen Hundred and Twenty-Seven

Frederick W. Johnson
Secretary

James A. Angell
President

NEW-YORK
N. Y. LIFE

James A. Angell
President

Insurance Payable at Death. Single Premium. Annual Participation in Surplus.

9/3

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance Company.

(Photostat Opposite)

Sheet 4

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PARTICIPATION IN SURPLUS—DIVIDENDS

The proportion of divisible surplus accruing upon this Policy shall be ascertained annually. On each anniversary such surplus as shall have been apportioned by the Company to this Policy shall at the option of the Insured be either

- (a) Paid in cash; or
- (b) Applied to purchase a participating paid-up addition to the sum insured (herein referred to as Dividend Additions); or
- (c) Left to accumulate at such rate of interest as the Company may declare on funds so held. Interest shall be at a rate never less than three per cent compounded and credited annually. Such accumulated dividends (herein referred to as Dividend Deposits) may be withdrawn in cash by the Insured on any anniversary of the Policy or shall be payable at the maturity of the Policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a dividend addition to the sum insured. The Insured may surrender any dividend addition for cash at any time, and the cash value thereof shall never be less than the original cash dividend.

MISCELLANEOUS BENEFITS

Assignment.—Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary.—The Insured may from time to time change the beneficiary, unless otherwise provided by endorsement on this Policy or unless there be an existing assignment of this Policy. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for endorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such endorsement the change will relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such endorsement or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Interest Allowed at Settlement of Death Claims.—Interest will be allowed on the proceeds of the Policy payable as a death claim from date of receipt of due proof of death at any office of the Company until the date settlement is made at the Home Office. Interest shall be at the rate declared by the Company on such funds, but at a rate not less than three per cent per annum.

Reinstatement.—At any time, upon presentation at the Home Office of evidence of insurability satisfactory to the Company, this Policy may be reinstated, together with any indebtedness, in accordance with the loan provisions of the Policy upon payment of arrears of interest. If arrears of interest are paid within thirty-one days from due date, the Policy will be continued without any other requirement than payment of overdue interest.

Residence, Travel and Occupation.—This Policy is free of conditions as to residence, travel, occupation, and military or naval service.

Rights of Insured.—The Insured, during his lifetime, and without the consent of the beneficiary, may receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy, unless otherwise provided by endorsement hereon.

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

Sheet 5

(Photostat Opposite)

4

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OPTIONAL METHODS OF SETTLEMENT

The Insured, or, in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy, in whole or in part, payable under one of the following options. Any such election or any change in election shall not take effect until endorsed on the Policy by the Company at its Home Office. The optional methods of settlement shall be available whether such proceeds are payable as a death claim or on maturity as an Endowment, or upon surrender of the Policy for its cash value, provided the Insured or interest payee to say payee is not less than \$10. If the Policy is assigned or if the beneficiary is not a natural person taking in his or her own right, the optional methods of settlement shall not apply or be available without the consent of the Company.

Option 1.—The proceeds in whole or in part may be left with the Company subject to withdrawal at any time on demand in sums of not less than one hundred dollars. The Company will credit interest annually on the proceeds so left with it at such rate as it may each year declare on such funds, and guarantees that the rate shall be not less than three per cent.

Option 2.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly installments for a fixed period as may be agreed upon, in accordance with the following table.

Option 3.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly installments for a fixed period of five, ten or twenty years, as may be agreed upon, and for the remaining lifetime of the payee, in accordance with the following table.

Option 4.—The proceeds in whole or in part may be left with the Company at interest until the death of the payee. The Company will pay interest thereon annually, semi-annually, quarterly or monthly, as may be agreed upon, at such rate as the Company may declare each year on such funds, and guarantees that the interest per one thousand dollars of the proceeds shall be not less than \$30 when paid annually, \$14.59 when paid semi-annually, \$7.42 when paid quarterly, or \$2.47 when paid monthly.

Option 5.—The proceeds in whole or in part may be left with the Company at interest and paid in equal annual, semi-annual, quarterly or monthly installments of such amount as may be agreed upon until the entire proceeds left with the Company, including interest thereon as provided in Option 1 have been paid, provided that the fund amount payable each year shall be not less than five per cent of the original proceeds left with the Company.

The first installment under Options 2, 3 and 5 will be payable on the date when the proceeds of the Policy become due, increased by each additional interest, in excess of three per cent per annum, as the Company may declare on such funds for that year. The additional interest under Option 2 will be calculated on the unpaid installments commuted at three per cent per annum, and under Option 3 on the unpaid installments for the fixed period selected, commuted at three per cent per annum. The first interest payment under Option 4 shall be made one year after the date when the proceeds of the Policy become due, if the interest is payable annually; six months after, if the interest is payable semi-annually; three months after, if quarterly; or one month after, if monthly.

At the death of any payee any unpaid sum left with the Company under Options 1, 4 or 5 with accrued interest to date of payment, or the commuted value at three per cent of any unpaid installments under Option 2, or the commuted value at three per cent of any unpaid installments for the fixed period selected under Option 3, will be paid in one sum to the executor or administrators of the payee, unless otherwise agreed in writing.

When the proceeds of the Policy become payable the Company will deliver to each payee a certificate evidencing the rights and benefits of each payee under the option selected.

Unless otherwise directed in writing by the Insured, the benefits under the above options shall not be transferable nor subject to commutation or incumbrance during the lifetime of the payee.

Special Settlement Agreement.—Provision may be made for payment of the proceeds of this Policy in any other manner that may be mutually agreed upon by the Insured and the Company and provided by rider or endorsement herein.

MONTHLY AND ANNUAL PAYMENTS FOR EACH \$1,000 OF PROCEEDS OF POLICY

The semi-annual and quarterly installments are 50.25% and 25.125% respectively of the annual installment under Option 2, and not less than these respective percentages under Option 3.

OPTION 2		OPTION 3—LIFE INCOME TO PAYEE WITH INCOME GUARANTEED FOR											
Age of Payee	Monthly Payment	5 Years Certain			10 Years Certain			15 Years Certain			20 Years Certain		
		Monthly Payment	Annual Payment	Per Cent of Proceeds	Monthly Payment	Annual Payment	Per Cent of Proceeds	Monthly Payment	Annual Payment	Per Cent of Proceeds	Monthly Payment	Annual Payment	Per Cent of Proceeds
1	\$6.47	\$3.81	\$44.53	3.81	\$3.75	\$44.99	3.75	\$3.69	\$45.45	3.69	\$3.63	\$45.91	3.63
2	6.46	3.80	44.48	3.80	3.74	44.94	3.74	3.68	45.40	3.68	3.62	45.86	3.62
3	6.45	3.79	44.43	3.79	3.73	44.89	3.73	3.67	45.35	3.67	3.61	45.81	3.61
4	6.44	3.78	44.38	3.78	3.72	44.84	3.72	3.66	45.30	3.66	3.60	45.76	3.60
5	6.43	3.77	44.33	3.77	3.71	44.79	3.71	3.65	45.25	3.65	3.59	45.71	3.59
6	6.42	3.76	44.28	3.76	3.70	44.74	3.70	3.64	45.20	3.64	3.58	45.66	3.58
7	6.41	3.75	44.23	3.75	3.69	44.69	3.69	3.63	45.15	3.63	3.57	45.61	3.57
8	6.40	3.74	44.18	3.74	3.68	44.64	3.68	3.62	45.10	3.62	3.56	45.56	3.56
9	6.39	3.73	44.13	3.73	3.67	44.59	3.67	3.61	45.05	3.61	3.55	45.51	3.55
10	6.38	3.72	44.08	3.72	3.66	44.54	3.66	3.60	45.00	3.60	3.54	45.46	3.54
11	6.37	3.71	44.03	3.71	3.65	44.49	3.65	3.59	44.95	3.59	3.53	45.41	3.53
12	6.36	3.70	43.98	3.70	3.64	44.44	3.64	3.58	44.90	3.58	3.52	45.36	3.52
13	6.35	3.69	43.93	3.69	3.63	44.39	3.63	3.57	44.85	3.57	3.51	45.31	3.51
14	6.34	3.68	43.88	3.68	3.62	44.34	3.62	3.56	44.80	3.56	3.50	45.26	3.50
15	6.33	3.67	43.83	3.67	3.61	44.29	3.61	3.55	44.75	3.55	3.49	45.21	3.49
16	6.32	3.66	43.78	3.66	3.60	44.24	3.60	3.54	44.70	3.54	3.48	45.16	3.48
17	6.31	3.65	43.73	3.65	3.59	44.19	3.59	3.53	44.65	3.53	3.47	45.11	3.47
18	6.30	3.64	43.68	3.64	3.58	44.14	3.58	3.52	44.60	3.52	3.46	45.06	3.46
19	6.29	3.63	43.63	3.63	3.57	44.09	3.57	3.51	44.55	3.51	3.45	45.01	3.45
20	6.28	3.62	43.58	3.62	3.56	44.04	3.56	3.50	44.50	3.50	3.44	44.96	3.44
21	6.27	3.61	43.53	3.61	3.55	43.99	3.55	3.49	44.45	3.49	3.43	44.91	3.43
22	6.26	3.60	43.48	3.60	3.54	43.94	3.54	3.48	44.40	3.48	3.42	44.86	3.42
23	6.25	3.59	43.43	3.59	3.53	43.89	3.53	3.47	44.35	3.47	3.41	44.81	3.41
24	6.24	3.58	43.38	3.58	3.52	43.84	3.52	3.46	44.30	3.46	3.40	44.76	3.40
25	6.23	3.57	43.33	3.57	3.51	43.79	3.51	3.45	44.25	3.45	3.39	44.71	3.39
26	6.22	3.56	43.28	3.56	3.50	43.74	3.50	3.44	44.20	3.44	3.38	44.66	3.38
27	6.21	3.55	43.23	3.55	3.49	43.69	3.49	3.43	44.15	3.43	3.37	44.61	3.37
28	6.20	3.54	43.18	3.54	3.48	43.64	3.48	3.42	44.10	3.42	3.36	44.56	3.36
29	6.19	3.53	43.13	3.53	3.47	43.59	3.47	3.41	44.05	3.41	3.35	44.51	3.35
30	6.18	3.52	43.08	3.52	3.46	43.54	3.46	3.40	44.00	3.40	3.34	44.46	3.34
31	6.17	3.51	43.03	3.51	3.45	43.49	3.45	3.39	43.95	3.39	3.33	44.41	3.33
32	6.16	3.50	42.98	3.50	3.44	43.44	3.44	3.38	43.90	3.38	3.32	44.36	3.32
33	6.15	3.49	42.93	3.49	3.43	43.39	3.43	3.37	43.85	3.37	3.31	44.31	3.31
34	6.14	3.48	42.88	3.48	3.42	43.34	3.42	3.36	43.80	3.36	3.30	44.26	3.30
35	6.13	3.47	42.83	3.47	3.41	43.29	3.41	3.35	43.75	3.35	3.29	44.21	3.29
36	6.12	3.46	42.78	3.46	3.40	43.24	3.40	3.34	43.70	3.34	3.28	44.16	3.28
37	6.11	3.45	42.73	3.45	3.39	43.19	3.39	3.33	43.65	3.33	3.27	44.11	3.27
38	6.10	3.44	42.68	3.44	3.38	43.14	3.38	3.32	43.60	3.32	3.26	44.06	3.26
39	6.09	3.43	42.63	3.43	3.37	43.09	3.37	3.31	43.55	3.31	3.25	44.01	3.25
40	6.08	3.42	42.58	3.42	3.36	43.04	3.36	3.30	43.50	3.30	3.24	43.96	3.24
41	6.07	3.41	42.53	3.41	3.35	42.99	3.35	3.29	43.45	3.29	3.23	43.91	3.23
42	6.06	3.40	42.48	3.40	3.34	42.94	3.34	3.28	43.40	3.28	3.22	43.86	3.22
43	6.05	3.39	42.43	3.39	3.33	42.89	3.33	3.27	43.35	3.27	3.21	43.81	3.21
44	6.04	3.38	42.38	3.38	3.32	42.84	3.32	3.26	43.30	3.26	3.20	43.76	3.20
45	6.03	3.37	42.33	3.37	3.31	42.79	3.31	3.25	43.25	3.25	3.19	43.71	3.19
46	6.02	3.36	42.28	3.36	3.30	42.74	3.30	3.24	43.20	3.24	3.18	43.66	3.18
47	6.01	3.35	42.23	3.35	3.29	42.69	3.29	3.23	43.15	3.23	3.17	43.61	3.17
48	6.00	3.34	42.18	3.34	3.28	42.64	3.28	3.22	43.10	3.22	3.16	43.56	3.16
49	5.99	3.33	42.13	3.33	3.27	42.59	3.27	3.21	43.05	3.21	3.15	43.51	3.15
50	5.98	3.32	42.08	3.32	3.26	42.54	3.26	3.20	43.00	3.20	3.14	43.46	3.14
51	5.97	3.31	42.03	3.31	3.25	42.49	3.25	3.19	42.95	3.19	3.13	43.41	3.13
52	5.96	3.30	41.98	3.30	3.24	42.44	3.24	3.18	42.90	3.18	3.12	43.36	3.12
53	5.95	3.29	41.93	3.29	3.23	42.39	3.23	3.17	42.85	3.17	3.11	43.31	3.11
54	5.94	3.28	41.88	3.28	3.22	42.34	3.22	3.16	42.80	3.16	3.10	43.26	3.10
55	5.93	3.27	41.83	3.27	3.21	42.29	3.21	3.15	42.75	3.15	3.09	43.21	3.09
56	5.92	3.26	41.78	3.26	3.20	42.24	3.20	3.14	42.70	3.14	3.08	43.16	3.08
57	5.91	3.25	41.73	3.25	3.19	42.19	3.19	3.13	42.65	3.13	3.07	43.11	3.07
58	5.90	3.24	41.68	3.24	3.18	42.14	3.18	3.12	42.60	3.12	3.06	43.06	3.06
59	5.89	3.23	41.63	3.23	3.17	42.09	3.17	3.11	42.55	3.11	3.05	43.01	3.05
60	5.88	3.22	41.58	3.22	3.16	42.04	3.16	3.10	42.50	3.10	3.04	42.96	3.04
61	5.87	3.21	41.53	3.21	3.15	41.99	3.15	3.09	42.45	3.09	3.03	42.91	3.03
62	5.86	3.20	41.48	3.20	3.14	41.94	3.14	3.08	42.40	3.08	3.02	42.86	3.02
63	5.85	3.19	41.43	3.19	3.13	41.89	3.13	3.07	42.35	3.07	3.01	42.81	3.01
64	5.84	3.18	41.38	3.18	3.12	41.84	3.12	3.06	42.30	3.06	3.00	42.76	3.00
65	5.83	3.17	41.33	3.17	3.11	41.79	3.11	3.05	42.25	3.05	2.99	42.71	2.99
66	5.82	3.16	41.28	3.16	3.10	41.74	3.10	3.04	42.20	3.04	2.98	42.66	2.98
67	5.81	3.15	41.23	3.15	3.09	41.69	3.09	3.03	42.15	3.03	2.97	42.61	2.97
68	5.80	3.14	41.18	3.14	3.08	41.64	3.08	3.02	42.10	3.02	2.96	42.56	2.96
69	5.79	3.13	41.13	3.13	3.07	41.59	3.07	3.01	42.05	3.01	2.95	42.51	2.95
70	5.78	3.12	41.08	3.12	3.06	41.54	3.06	3.00	42.00	3.00	2.94	42.46	2.94
71	5.77	3.11	41.03	3.11	3.05	41.49	3.05	2.99	41.95	2.99	2.93	42.41	2.93
72	5.76	3.10	40.98	3.10	3.04	41.44	3.04	2.98	41.90	2.98	2.92	42.36	2.92
73	5.75	3.09	40.93	3.09	3.03	41.39	3.03	2.97	41.85	2.97	2.91	42.31	2.91
74	5.74	3.08	40.88	3.08	3.02	41.34	3.02	2.96	41.80	2.96	2.90	42.26	2.90
75	5.73	3.07	40.83	3.07	3.01	41.29	3.01	2.95	41.75	2.95	2.89	42.21	2.89
76	5.72	3.06	40.78	3.06	3.00	41.24	3.00	2.94	41.70	2.94	2.88	42.16	2.88
77	5.71	3.05	40.73	3.05	2.99	41.19	2.99	2.93	41.65	2.93	2.87	42.11	2.87
78	5.70	3.04	40.68	3.04	2.98	41.14	2.98	2.92	41.60	2.92	2.86	42.06	2.86
79	5.69	3.03	40.63	3.03	2.97	41.09	2.97	2.91	41.55	2.91	2.85	42.01	2.85
80	5.68	3.02	40.58	3.02	2.96	41.04	2.96	2.90	41.50	2.90	2.84	41.96	2.84
81	5.67	3.01	40.53	3.01	2.95	40.99	2.95	2.89	41.45	2.89	2.83	41.91	2.83
82	5.66	3.00	40.48	3.00	2.94	40.94	2.94	2.88	41.40	2.88	2.82	41.86	2.82
83	5.65	2.99	40.43	2.99	2.93	40.89	2.93	2.87	41.35	2.87	2.81	41.81	2.81
84	5.64	2.98	40.38	2.98	2.92	40.84	2.92	2.86	41.30	2.86	2.80	41.76	2.80
85	5.63	2.97	40.33	2.97	2.91	40.79	2.91	2.85	41.25	2.85	2.79	41.71	2.79
86	5.62	2.96	40.28	2.96	2.90	40.74	2.90	2.84	41.20	2.84	2.78	41.66	2.78
87	5.61	2.95	40.23	2.95	2.89	40.69	2.89	2.83	41.15	2.83	2.77	41.61	2.77
88	5.60	2.94	40.18	2.94	2.88	40.64	2.88	2.82	41.10	2.82	2.76	41.56	2.76
89	5.59	2.93	40.13	2.93	2.87	40.59	2.87	2.81	41.05	2.81	2.75	41.51	2.75
90	5.58	2.92	40.08	2.92	2.86	40.54	2.86	2.80	41.00	2.80	2.74	41.46	2.74
91	5.57	2.91	40.03	2.91	2.85	40.49	2.85	2.79	40.95	2.79	2.73	41.41	2.73
92	5.56	2.90	39.98	2.90	2.84	40.44	2.84	2.78	40.90	2.78	2.72	41.36	2.72
93	5.55	2.89											

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance Company.

(Photostat Opposite)

Sheet 6

GUARANTEED LOAN AND SURRENDER VALUES

LOANS.—At any time after one year and while this Policy is in force, the Company, upon receipt of this Policy and Agreement satisfactory to the Company, will advance to the Insured on the sole security of this Policy any amount with interest, shall be within the limit of the Cash Surrender Value Policy. Interest on the loan will be at the rate of six per cent per annum payable annually on the anniversary of the Policy. Any existing loan to the Company on this Policy, including accrued interest will be deducted from the amount of said loan. If interest is not paid due it shall be added to the principal. All or any part of the loan may be repaid at any time while the Policy is in force. To repay such indebtedness as to pay interest will not avoid the loan but whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice to the last known address of the Insured or the assignee of record, if any.

SURRENDER VALUES.—At the end of any insurance year the Insured under this Policy and all claims thereunder and receive its Cash Surrender Value less any indebtedness hereon. The Cash Surrender Value is the reserve on the face amount of the Policy at the end of the insurance year, omitting fractions of a dollar per thousand of insurance reserve on any outstanding dividend additions, and any outstanding dividends, including dividend deposits, and less a surrender charge for the first to the ninth years, inclusive, of not more than one and one-half per cent of the face of the Policy. The reserve shall be computed on the basis of the American experience table of mortality and interest at four per cent.

The values in the "Table of Guaranteed Loan and Surrender Values" are determined in accordance with the above provisions, on the basis of \$1,000 of insurance, assuming that there is no indebtedness to the Company, and no outstanding dividend additions nor any outstanding dividend deposits, and after deduction of the surrender charge, if any.

TABLE OF GUARANTEED LOAN AND SURRENDER VALUES

At End of Year	Cash Surrender Value or Loan Value for each \$1,000 of Face Amount*
1	\$702
2	792
3	801
4	812
5	824
6	832
7	844
8	855
9	866
10	877
11	885
12	893
13	901
14	909
15	917
16	924
17	932
18	938
19	945
20	951
21	957
22	962
23	966
24	970
25	1000

*Values for later years will be computed on the same basis and will be furnished on request.

*The Loan Value in the above table are the maximum amounts available at the end of the policy year indicated, and may vary if borrowed during the policy year as set forth in this Section under "Loans."

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance Company.

(Photostat Opposite)

Sheet 7

OTHER PROVISIONS

Age.—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Indebtedness.—Any indebtedness to the Company against this Policy will be deducted in any settlement thereof.

Self-Destruction.—In event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premium thereon which has been paid to and received by the Company and no more.

The Contract.—The Policy and the application therefor, copy of which is attached hereto, constitute the entire contract. No statement made by the Insured shall, in absence of fraud, be deemed representations and not warranties, and no statement made by the Insured shall be used in defense to a claim under it, unless it is contained in the written application and a copy of the application is indorsed upon or attached to this Policy when issued. No agent is authorized to make or modify this contract, give any forfeiture or any of the Company's rights or requirements. All benefits under this Policy are payable at the office of the Company in the City and State of New York, and the surrender of the Policy will be required in any event thereof.

Incontestability.—This Policy shall be incontestable after two years from its date of issue.

REGISTER OF CHANGE OF BENEFICIARY

NOTE.—NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS INDORSED ON THIS POLICY BY THE COMPANY AT THE HOME OFFICE.

OF REQUEST	BENEFICIARY	INDORSED BY

617

Tightly Bound

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

(Photostat Opposite)

Sheet 8

INDORSEMENTS

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

(Photostat Opposite)

Sheet 9

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APPLICATION — NEW YORK LIFE COMPANY — Part I

FLOEFFE GUAGENMEIN

[illegible]

THE UNIVERSITY OF CHICAGO

1. Name to be
2. 11/1/44
3. FOLLOWED BY FOLLOWING FOR FAYETTE UNIVERSITY - NEW YORK - NEW YORK - AS LATER

[illegible]

Those life

11000 nyl

4. Entitled to a. Paid in each
b. Applied towards payment of premiums;
c. Applied to purchase additional paid-up insurance;
d. Left to accumulation at interest, subject to my order

(Strike out heading and heading)

(Strike out end)

[illegible]

Estad

6. a. The following is all the business now in force on my list:
 (Please name of Company and amount (if more, say none))
 b. The business for which I am now applying is not intended to take the place of
 business carried with this or any other Company. If it is, give particulars:

No.	Name and address of the company, if it is, give particulars:	(If none, say none)
3.	Of the insurance in my life the amount which includes benefits in event of total disability is 0	
4.	Is Company not entitled to have insurance on my life or insured or agreed to have insurance on my life differing from the insurance applied for, except as follows: (If none, say none)	none

3. Have you participated in a program of education in relation to terrorism?

[illegible]

Sent at New York May 12, 1864 per 100 11
 Witnessed by Henry J. Townsend Secretary of the person
 applying for insurance.
 Agent, Charles C. Green

[illegible]

CONTRIBUTION TO BE CREDITED BY INSTANT UPON MAKING ANY PAYMENT WITH THIS APPLICATION

I **hereby** **declare** that I have said to _____
Dated at _____ 188__

and that I held his receipt for the same, made up, without alteration, on the receipt form detached from and corresponding in date and number with this application. I assert to the terms of said receipt.

Dollars (\$) in cash

(Signature of Applicant)

TELE OFF 1000

Records from _____ this _____ day of _____ 193_____

6B 379387

in connection with this application for insurance in New York Life Insurance Company, said application corresponding in date and number with this receipt and containing said applicant's declaration that he has paid the sum hereby receipted for, and that he avails in the terms of this receipt, as follows, to wit:

I, the undersigned, do hereby certify that I have received from the Company the sum of _____ Dollars (\$ _____) which I acknowledge to be the amount of the premium due on my policy numbered _____ of the _____ class, issued by the Company on the _____ day of _____ A.D. 19____.

(See also page 100)

Exhibit C Annexed to Stipulation

Policy No. 12,486,936 of the New York Life Insurance
Company.

(Photostat Opposite)

Sheet 10

88.8

NEW YORK LIFE INSURANCE COMPANY

FLORENCE GUGGENHEIM

No. 12 486 936

Amount \$ 100,000

Single Premium \$ 84523.00

VANDERBILT AVE. Death

Notice: It is not necessary for the insured or the Beneficiary to employ the agency of any person in collecting the insurance under this Policy, or in receiving any of its benefits. Time and expense will be saved by writing direct to the Home Office, 61 Madison Avenue, Madison Square, New York, N. Y.

Insurance payable at death.
Single Premium.
Annual Participation in Surplus.

8106 888-317

EXHIBIT "D" ANNEXED TO STIPULATION

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 1

BLANK PAGE

DUPLICATE

NATIONAL LIFE INSURANCE COMPANY
MONTPELIER VERMONT

ABSOLUTE ASSIGNMENT OF POLICY
(INDIVIDUAL FORM)

Know All Men by These Presents:

That we, Florence Suggaham of Port Washington in the County
of Dusser and State of New York, the insured under a certain
policy numbered 632641 issued under date of December 27, 1934 by

NATIONAL LIFE INSURANCE COMPANY, MONTPELIER, VERMONT,

and the beneficiary under said policy, both hereinafter termed "Assignor", for value received do hereby assign, transfer, and set over unto Charles S. Watson of Purchase in the County of Warren and State of New York, hereinafter termed "Assignee", all right, title, and interest in and to said policy, and all renewals thereof and any policy into which said policy may be converted, and all additions thereto, if any, together with all the privileges, benefits and advantages to be had and derived therefrom, including all surplus and dividend rights, but reserving the right to disability income benefits and to the accidental death benefit, if any, and said assignee is hereby fully authorized and empowered to do and perform in his name or in that of the assignor every act and thing necessary, convenient or desirable to fully exercise and enjoy every right, privilege, benefit and advantage hereby conveyed.

The assignor hereby covenants, promises, and agrees that no proceedings, voluntary or involuntary, under the United States Bankruptcy Law are now pending against the assignor or assignors or either of them; that said assignee by the value paid to said assignor has an insurable interest in the life of the insured; that all acts and things which said assignee shall lawfully do under this power shall be binding upon the assignor, who hereby expressly ratifies and confirms all acts and things lawfully done or to be done by said assignee hereunder.

The singular of "assignor" and "assignee" herein shall include the plural, the masculine shall include the feminine, and the specific mention of any right or privilege shall not exclude other rights or privileges generally referred to herein or reasonably implied herefrom.

WITNESS my hand and seal hereunto, and to the duplicate hereof, affixed this 27 day of December A. D. 1934.

In presence of

W. S. Cunningham Florence Suggaham
Address 623 1/2 East Ave. Ellettsville

State of New York At New York in said County
COUNTY OF New York ss. and State, on this 27 day of Dec
A. D. 1934 personally appeared

Florence Suggaham
to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as her free act and deed.

NOTARY PUBLIC NEW YORK COUNTY
CLERK NO. 27 REG. 2796 VOL. 5, 13
COMMISSION EXPIRES MARCH 30, 1935

My commission expires

Received and original filed this 31 day of Jan'y 1935, assuming,
however, no responsibility as to its validity or effect.

NATIONAL LIFE INSURANCE COMPANY

By C. S. Clark Secretary

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 2

DISCHARGE OF ASSIGNMENT

IN CONSIDERATION of full payment, receipt of which is hereby acknowledged, and of other valuable consideration, I hereby release all right, title and interest in and under the assignment on the reverse of this document and to the policy therein assigned and said assignment is hereby fully discharged.

WITNESS my hand and seal this day of A. D. 19

In presence of

STATE OF
COUNTY OF

At in said County
ss. and State, on this day of
A. D. 19....., personally appeared

one known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as free act and deed.

Before me

Notary Public

My commission expires

19

7/2

Tightly Bound

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 3

National Life Insurance Company
MONTPELIER VERMONT

Premium
\$88,530.00

Number
639645

Age—71—

SUM INSURED:—One Hundred Thousand (100,000)—dollars

INSURED:—Florence Guggenheim of Port Washington, New York—

BENEFICIARY:—Insured's Estate—

The right to change the beneficiary has—been reserved.

PREMIUM: Eighty-six Thousand Five Hundred Fifty and no/100 dollars to be paid on delivery of this policy.

IN CONSIDERATION of the application for this policy and of the payment of the premium as above specified, the National Life Insurance Company promises to pay at its Home Office to the beneficiary specified herein the sum insured, less any indebtedness to the Company on account of this policy, on receipt at the Home Office of due proofs of the death of the insured while this policy is in force and on its surrender.

THIS POLICY and the application, a copy of which is hereto attached, constitute the entire contract between the parties.

THE PROVISIONS on the pages following are a part of this contract as fully as if recited at length over the signature of the Company.

NO ONE except the President, a Vice President, the Secretary or an Assistant Secretary has power in behalf of the Company to modify this policy or to bind the Company by making any promises or by accepting any representation or information not contained in the application for this policy. These powers will not be delegated.

THIS POLICY shall be incontestable from its date of issue.

EXECUTED at Montpelier, Vermont, this 17th day of December 1934.

NATIONAL LIFE INSURANCE COMPANY

By

A. R. P.
Assistant Secretary

Richard Howland
President

Life Policy with Annual Distribution of Surplus
Single Premium

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 4

PARTICIPATION. This policy shall participate in the surplus on the first anniversary, and the Company will annually determine and account the portion of the divisible surplus applicable hereto. Dividends declared shall become absolutely the property of the Insured and at option may be: 1st, Withdrawn in cash, or 2nd, Deposited with the company subject to the payment annually of three per cent interest thereon and the share of surplus interest apportioned thereto by the directors, which deposits may be withdrawn at any time or will be included in any cash settlement of this policy. Unless the Insured shall elect otherwise prior to thirty days after any anniversary, the same shall be held at interest as provided in option 2nd.

SURRENDER. On application and legal surrender of this policy at any time after one year from date, the owner shall be entitled to a Cash Surrender Value.

Such settlement will be in accordance with the following table if the policy be free from indebtedness to the Company and have no outstanding paid-up additions:

TABLE OF CASH AND LOAN VALUES

For each \$1,000 of the face amount of this policy, provided there are no dividend additions or indebtedness. If there are dividend additions and/or outstanding indebtedness, the values in this table will be modified as defined in sub-division (b) below.

At End of Policy Year	Cash or Loan Value for Each \$1000 of the Face Amount of the Policy
1	\$788
2	796
3	815
4	824
5	834
6	842
7	851
8	860
9	869
10	877
11	885
12	893
13	901
14	909
15	917
16	924
17	932
18	938
19	945
20	951

The corresponding values for intervening and subsequent years will be extended on request, upon a like basis of calculation.

---The cash value at the end of any year, less six per cent, may be obtained as a loan at any time during the year.

The cash values in the above table are the full reserves (cents omitted) according to the American Experience Table of Mortality with interest three per cent yearly, less surrender charges already made for each \$10 of insurance of \$10 in the first and second policy years and with surrender charges thereafter.

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 5

TER--continued

the policy be subject to indebtedness to the Company and/or additions be outstanding at date of surrender, the cash value that determined by the table, plus the full reserve value of conditions, minus any indebtedness.

Calculations of reserves will be on the basis of the American Experience Table of Mortality with interest at three per cent yearly and to the attained age of the Insured at nearest birthday.

FOR ADVANCES. Without the consent or participation of any beneficiary whom the Insured can change or of any contingent beneficiary, the Company will advance, upon the sole security of this policy at any time while in force and upon receipt by it of this policy properly indorsed, any amount up to the limit secured by its cash value. The interest on all advances shall be six per cent per annum payable annually on the anniversary of the date of the policy. If such interest be not paid when due, it shall be added to the principal until the total indebtedness on this policy equals or exceeds the then cash value; upon, if then the interest be not paid this policy shall become void but not until thirty-one days after notice shall have been mailed by the Company to the last known address of the person to whom the loan was made, of the Insured, and of any assignee under assignment duly filed with the Company. All or any part of the indebtedness may be paid at any time while this policy is in full force.

RIGHT OF BENEFICIARY. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured unless otherwise provided by this policy.

RIGHT OF BENEFICIARY. If the right has been reserved, the Insured, at any time or from time to time by filing at the office of the Company written request therefor in such form as the Company may require, such change to take effect only when endorsed by the Company in the lifetime of the Insured.

PAID UP ENDOWMENT. When the cash value and the accumulation of dividends left with the Company equal the face amount of the policy, the Company will, on legal surrender, pay such amount, less any indebtedness to the Company hereon or secured hereby, as a matured endowment.

REDUCTION IN AGE. If the age of the Insured has been misstated, satisfactory proof thereof the amount payable under any of the provisions of this policy shall be such as the premium paid would have produced at the correct age.

ASSIGNMENTS. The Company assumes no responsibility for the validity of any assignment of this policy, nor will any assignment of the policy be recognized until it has been duly filed at the Company's Home Office.

DISCLAIMERS. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties and no statement shall avoid this policy or be used in defence of a claim thereon unless contained in the written application and a copy of the application is indorsed on or attached to the policy when issued.

NOTICE TO MEMBERS. The Insured is hereby notified that he is a member of the National Life Insurance Company during the continuance of this policy and that the annual meetings of the Company are holden at its office in Montpelier, Vermont, on the fourth Tuesday of January of each year at 10 o'clock A.M.

Tightly Bound

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 6

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SETTLEMENT. All claims under this policy are payable at the Home Office in Montpelier, Vermont. The interest of any minor (beneficiary or assignee) must be released by a legally appointed guardian, duly authorized by the appointing court, before any adjustment of this policy will be made.

Optional Modes of Settlement

Settlement of this policy or a part thereof in any one of the methods provided in paragraphs 1, 2, 3 or 4 below in lieu of the payment in one sum at the death of the insured, will be made, subject to the following conditions:

Installments under the options described below will not be paid to a corporation or an association for a period in excess of ten years. The Company will not retain less than \$1,000 or make a periodical payment to a beneficiary of less than \$10.

Before maturity of this policy by death an election of a settlement option may be made by the insured and this policy must be returned to the Company's Home Office for an appropriate endorsement in his lifetime. After such maturity, if the policy is not assigned and no installment settlement elected by the insured is in force, the beneficiary shall have a similar right of election upon notice filed at the Home Office before payment has been made; and at the time of such election the beneficiary may reserve the right to withdraw on any anniversary the principal retained under Provision 1 or the value of unpaid installments certain under Provisions 2, 3 and 4 commuted at three per cent interest compounded annually. An absolute assignee may have similar rights under Provision 1 or Provision 2. Any such election or a revocation thereof must be in writing in form satisfactory to the Company.

In case of settlement in other than one sum, this policy must be surrendered to the Company and a certificate expressing the terms of the settlement will be issued.

1. **Interest.** The Company will retain all or part of the proceeds in its general funds and annually pay to the beneficiary three per cent interest, first payment one year after the maturity of this policy; and at the death of the beneficiary it will pay the principal and accrued interest to his or her executor or administrators.

2. **Installments Certain.** The Company will pay all or part of the proceeds to the beneficiary in a specified number of annual, semi-annual, quarterly or monthly installments according to Provision 2 in the following table of installment settlements, first payment immediate. If the beneficiary shall die before all installments are paid, the Company will pay the value of the unpaid installments, commuted at three per cent interest compounded annually, to his or her executor or administrators.

Installment Settlement on Basis of \$1,000 Insurance Proceeds

PROVISION 3

INSTALLMENTS CERTAIN

Number of Installments	Yearly Installments Certain	Or Payable		Yearly Installments Certain	Number of Installments	Or Payable		
		Semi-Annually	Quarterly			Semi-Annually	Quarterly	Monthly
1	\$1,000.00	\$500.00	\$250.00	1	16	\$328.93	\$119.64	\$39.88
2	507.36	253.67	126.83	2	7	37.14	12.04	4.01
3	343.23	172.08	86.77	3	13	35.96	11.98	3.99
4	261.19	131.06	65.68	4	19	34.14	11.33	3.78
5	211.99	106.79	53.39	5	20	33.87	10.95	3.65
6	179.22	89.61	44.81	6	21	31.73	10.38	3.46
7	155.85	77.92	38.96	7	22	30.68	10.00	3.34
8	138.31	69.15	34.58	8	23	29.74	9.62	3.20
9	124.09	62.03	31.01	9	24	28.87	9.24	3.07
10	113.82	57.91	28.77	10	25	28.08	8.86	2.95
11	104.85	53.45	26.83	11	26	27.36	8.48	2.83
12	97.04	49.13	24.68	12	27	26.68	8.10	2.71
13	91.29	45.86	23.09	13	28	26.03	7.72	2.59
14	86.95	43.29	21.73	14	29	25.40	7.34	2.47
15	83.33	40.99	20.44	15	30	24.78	6.96	2.35

3. **Installments Certain and Continuous.** The Company will pay all or part of the proceeds to the beneficiary according to Provision 3 and the formula in the following table of installment settlements in a specified number of annual, semi-annual, quarterly or monthly installments certain, and for so many years longer as the beneficiary shall live, first payment immediate. If the beneficiary shall die before all installments certain are paid, the Company will pay the value of the unpaid installments certain, commuted at three per cent interest compounded annually, to his or her executor or administrators. If the beneficiary shall die after all installments certain are paid, the fractional continuous installments required to complete the year to the next anniversary of the initial payment will be commuted and paid in like manner. (See table on following page.)

4. **Interest and Installment Combinations.** The Company will pay all or part of the proceeds or interest thereon under such combinations or modifications of the foregoing provisions or in such other manner as may be mutually agreed upon by the Company and the insured and incorporated in this policy.

5. **Surplus Interest Participation.** There will be added to the interest payments under Provision 1 and to the installments certain settlements under Provisions 2, 3 and 4 above the share of surplus interest apportioned to this policy by the Directors, to be paid annually beginning with the first annual interest payment or on the anniversary of the payment of the first installment certain.

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of
Vermont.

(Photostat Opposite)

Sheet 7

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Installment Settlements on Basis of \$1,000 of Insurance Proceeds

PROVISION 3

INSTALLMENTS CERTAIN AND CONTINUOUS

Age at Death Years of Policy	Installments for 10 Years Certain and During After Life of Beneficiary				Installments for 15 Years Certain and During After Life of Beneficiary				Installments for 20 Years Certain and During After Life of Beneficiary				Age at Death Years of Policy
	Annual		Monthly		Annual		Monthly		Annual		Monthly		
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
10	41.42	41.50	3.50	3.43	40.83	40.72	3.45	3.39	40.24	40.13	3.40	3.34	10
11	41.66	40.85	3.52	3.45	41.05	40.94	3.47	3.40	40.47	40.36	3.42	3.35	11
12	41.89	41.18	3.54	3.46	41.30	41.18	3.51	3.44	40.69	40.58	3.43	3.37	12
13	42.13	41.42	3.56	3.48	41.54	41.41	3.53	3.45	40.93	40.81	3.45	3.38	13
14	42.37	41.65	3.58	3.50	41.77	41.63	3.55	3.47	41.16	41.03	3.47	3.40	14
15	42.61	41.88	3.60	3.52	42.00	41.85	3.56	3.49	41.39	41.25	3.49	3.42	15
16	42.85	42.13	3.62	3.54	42.23	42.07	3.57	3.49	41.62	41.47	3.51	3.44	16
17	43.09	42.37	3.64	3.56	42.46	42.29	3.59	3.51	41.85	41.69	3.53	3.46	17
18	43.32	42.60	3.66	3.58	42.69	42.51	3.61	3.53	42.08	41.91	3.55	3.47	18
19	43.56	42.83	3.68	3.60	42.92	42.73	3.63	3.55	42.31	42.13	3.57	3.49	19
20	43.79	43.05	3.70	3.62	43.15	42.95	3.65	3.57	42.54	42.35	3.59	3.51	20
21	44.02	43.28	3.72	3.64	43.38	43.17	3.67	3.59	42.77	42.57	3.61	3.53	21
22	44.25	43.51	3.74	3.66	43.61	43.40	3.69	3.61	43.00	42.79	3.63	3.55	22
23	44.48	43.74	3.76	3.68	43.84	43.62	3.71	3.63	43.23	43.01	3.65	3.57	23
24	44.71	43.97	3.78	3.70	44.07	43.85	3.73	3.65	43.46	43.23	3.67	3.59	24
25	44.94	44.20	3.80	3.72	44.30	44.07	3.75	3.67	43.69	43.45	3.69	3.61	25
26	45.17	44.43	3.82	3.74	44.53	44.30	3.77	3.69	43.92	43.67	3.71	3.63	26
27	45.40	44.66	3.84	3.76	44.76	44.52	3.79	3.71	44.15	43.89	3.73	3.65	27
28	45.63	44.89	3.86	3.78	44.99	44.74	3.81	3.73	44.38	44.11	3.75	3.67	28
29	45.86	45.12	3.88	3.80	45.22	44.96	3.83	3.75	44.61	44.33	3.77	3.69	29
30	46.09	45.35	3.90	3.82	45.45	45.18	3.85	3.77	44.84	44.55	3.79	3.71	30
31	46.32	45.58	3.92	3.84	45.68	45.40	3.87	3.79	45.07	44.77	3.81	3.73	31
32	46.55	45.81	3.94	3.86	45.91	45.62	3.89	3.81	45.30	45.00	3.83	3.75	32
33	46.78	46.04	3.96	3.88	46.14	45.84	3.91	3.83	45.53	45.22	3.85	3.77	33
34	47.01	46.27	3.98	3.90	46.37	46.06	3.93	3.85	45.76	45.44	3.87	3.79	34
35	47.24	46.50	4.00	3.92	46.60	46.28	3.95	3.87	45.99	45.66	3.89	3.81	35
36	47.47	46.73	4.02	3.94	46.83	46.50	3.97	3.89	46.22	45.88	3.91	3.83	36
37	47.70	46.96	4.04	3.96	47.06	46.72	3.99	3.91	46.45	46.10	3.93	3.85	37
38	47.93	47.19	4.06	3.98	47.29	46.94	4.01	3.93	46.68	46.32	3.95	3.87	38
39	48.16	47.42	4.08	4.00	47.52	47.17	4.03	3.95	46.91	46.54	3.97	3.89	39
40	48.39	47.65	4.10	4.02	47.75	47.39	4.05	3.97	47.14	46.76	3.99	3.91	40
41	48.62	47.88	4.12	4.04	47.98	47.61	4.07	3.99	47.37	46.98	4.01	3.93	41
42	48.85	48.11	4.14	4.06	48.21	47.83	4.09	4.01	47.60	47.20	4.03	3.95	42
43	49.08	48.34	4.16	4.08	48.44	48.05	4.11	4.03	47.83	47.42	4.05	3.97	43
44	49.31	48.57	4.18	4.10	48.67	48.27	4.13	4.05	48.06	47.64	4.07	3.99	44
45	49.54	48.80	4.20	4.12	48.90	48.48	4.15	4.07	48.29	47.86	4.09	4.01	45
46	49.77	49.03	4.22	4.14	49.13	48.69	4.17	4.09	48.52	48.08	4.11	4.03	46
47	49.99	49.26	4.24	4.16	49.36	48.90	4.19	4.11	48.75	48.30	4.13	4.05	47
48	50.22	49.49	4.26	4.18	49.59	49.11	4.21	4.13	48.98	48.52	4.15	4.07	48
49	50.45	49.72	4.28	4.20	49.82	49.32	4.23	4.15	49.21	48.74	4.17	4.09	49
50	50.68	49.95	4.30	4.22	50.05	49.54	4.25	4.17	49.44	48.96	4.19	4.11	50
51	50.91	50.18	4.32	4.24	50.28	49.76	4.27	4.19	49.67	49.18	4.21	4.13	51
52	51.14	50.41	4.34	4.26	50.51	49.97	4.29	4.21	49.90	49.40	4.23	4.15	52
53	51.37	50.64	4.36	4.28	50.74	50.18	4.31	4.23	50.13	49.62	4.25	4.17	53
54	51.60	50.87	4.38	4.30	50.97	50.39	4.33	4.25	50.36	49.84	4.27	4.19	54
55	51.83	51.10	4.40	4.32	51.20	50.60	4.35	4.27	50.59	50.05	4.29	4.21	55
56	52.06	51.33	4.42	4.34	51.43	50.81	4.37	4.29	50.82	50.26	4.31	4.23	56
57	52.29	51.56	4.44	4.36	51.66	51.02	4.39	4.31	51.05	50.47	4.33	4.25	57
58	52.52	51.79	4.46	4.38	51.89	51.22	4.41	4.33	51.28	50.68	4.35	4.27	58
59	52.75	52.02	4.48	4.40	52.12	51.42	4.43	4.35	51.51	50.88	4.37	4.29	59
60	52.98	52.25	4.50	4.42	52.35	51.62	4.45	4.37	51.74	51.07	4.39	4.31	60
61	53.21	52.48	4.52	4.44	52.58	51.82	4.47	4.39	51.97	51.26	4.41	4.33	61
62	53.44	52.71	4.54	4.46	52.81	52.02	4.49	4.41	52.20	51.46	4.43	4.35	62
63	53.67	52.94	4.56	4.48	53.04	52.21	4.51	4.43	52.43	51.65	4.45	4.37	63
64	53.90	53.17	4.58	4.50	53.27	52.41	4.53	4.45	52.66	51.85	4.47	4.39	64
65	54.13	53.40	4.60	4.52	53.50	52.60	4.55	4.47	52.89	52.03	4.49	4.41	65
66	54.36	53.63	4.62	4.54	53.73	52.79	4.57	4.49	53.12	52.21	4.51	4.43	66
67	54.59	53.86	4.64	4.56	53.96	52.98	4.59	4.51	53.35	52.39	4.53	4.45	67
68	54.82	54.09	4.66	4.58	54.19	53.17	4.61	4.53	53.58	52.57	4.55	4.47	68
69	55.05	54.32	4.68	4.60	54.42	53.35	4.63	4.55	53.81	52.75	4.57	4.49	69
70	55.28	54.55	4.70	4.62	54.65	53.54	4.65	4.57	54.04	52.92	4.59	4.51	70
71	55.51	54.78	4.72	4.64	54.88	53.72	4.67	4.59	54.27	53.09	4.61	4.53	71
72	55.74	55.01	4.74	4.66	55.11	53.90	4.69	4.61	54.50	53.26	4.63	4.55	72
73	55.97	55.24	4.76	4.68	55.34	54.08	4.71	4.63	54.73	53.43	4.65	4.57	73
74	56.20	55.47	4.78	4.70	55.57	54.26	4.73	4.65	54.96	53.60	4.67	4.59	74
75	56.43	55.70	4.80	4.72	55.80	54.43	4.75	4.67	55.19	53.76	4.69	4.61	75
76	56.66	55.93	4.82	4.74	56.03	54.60	4.77	4.69	55.42	53.92	4.71	4.63	76
77	56.89	56.16	4.84	4.76	56.26	54.77	4.79	4.71	55.65	54.08	4.73	4.65	77
78	57.12	56.39	4.86	4.78	56.49	54.94	4.81	4.73	55.88	54.24	4.75	4.67	78
79	57.35	56.62	4.88	4.80	56.72	55.11	4.83	4.75	56.11	54.40	4.77	4.69	79
80	57.58	56.85	4.90	4.82	56.95	55.27	4.85	4.77	56.34	54.56	4.79	4.71	80
81	57.81	57.08	4.92	4.84	57.18	55.44	4.87	4.79	56.57	54.71	4.81	4.73	81
82	58.04	57.31	4.94	4.86	57.41	55.60	4.89	4.81	56.80	54.86	4.83	4.75	82
83	58.27	57.54	4.96	4.88	57.64	55.76	4.91	4.83	57.03	55.01	4.85	4.77	83
84	58.50	57.77	4.98	4.90	57.87	55.92	4.93	4.85	57.26	55.16	4.87	4.79	84
85	58.73	58.00	5.00	4.92	58.10	56.07	4.95	4.87	57.49	55.31	4.89	4.81	85
86	58.96	58.23	5.02	4.94	58.33	56.22	4.97	4.89	57.72	55.46	4.91	4.83	86
87	59.19	58.46	5.04	4.96	58.56	56.37	4.99	4.91	57.95	55.60	4.93	4.85	87
88	59.42	58.69	5.06	4.98	58.79	56.52	5.01	4.93	58.18	55.74	4.95	4.87	88
89	59.65	58.92	5.08	5.00	59.02	56.67	5.03	4.95	58.41	55.88	4.97	4.89	89
90	59.88	59.15	5.10	5.02	59.25	56.81	5.05	4.97	58.6				

Exhibit D Annexed to Stipulation

Policy No. 632,645 of the National Insurance Company of Vermont.

(Photostat Opposite)

Sheet 8

APPLICATION, FORM A
 NEW YORK LIFE INSURANCE COMPANY, Montpelier, Vermont, for an insurance of \$ 100,000
 with a premium of \$ 10.00 per month. I was born on the 3d day of September, 1963.
 My age at nearest birthday is 71.
 I request the insurance payable to Estate.
 I reserve the right to change any beneficiary.
 I HAVE PAID TO None the first premium.
 I HEREBY CERTIFY that dividends of surplus, until otherwise ordered, be applied to purchase participating paid-up additions.
 I already carry insurance as follows:

Company	Year Insured	Total Amount of Insurance	With Waiver of Premiums	With Double Indemnity	With Double Indemnity	Accident or Health Insurance
<u>None</u>						

I have never applied to any company for insurance on my life without receiving the policy, except never applied previously.

HOME OFFICE CORRECTIONS OR AMENDMENTS (FOR HOME OFFICE USE ONLY)

It is understood and agreed (1) that if the amount of the premium on the insurance herein applied for is not paid at the time of making the application, the insurance shall be void and the policy shall be void and no policy shall be issued and delivered to me and the first premium shall be paid during my lifetime and good health; and (2) that if the amount of such premium is paid to the agent at the time of making this application the Company shall consider and act upon and application in accordance with its rules and practice of insurance; that if it is decided that I was at the time of my medical examination insurable upon the plan and for the amount of insurance hereby applied for, this application shall be approved and the insurance shall be effective in accordance with the terms of the policy applied for from the date of said medical examination or from such other date as I have herein requested, notwithstanding the provisions of the policy as to delivery in any lifetime and good health, when provided, in event of, and in consideration of said advance payment, we hereby waive, and such policy will be delivered to me or to my personal representative; but the Company may at any time before delivery of said policy, on receipt of additional information, rescind any approval heretofore and declare the insurance if it is not then satisfied that I was insurable on the date of said medical examination, and thereupon the Company shall not be so satisfied the amount of premium paid shall be returned.

No acceptance of any policy issued on this application will be a ratification by me of any change or correction to or amendment to the application made by the Company in the space above headed "Home Office Corrections or Amendments", and a photograph of each of the amended applications attached to the policy will be sufficient notice to me of the change made. No change shall be made as to amount, classification, plan of insurance or benefit unless agreed to in writing by me.

I understand and agree that the agent taking this application has no authority to make, modify, alter or discharge any contract hereby applied for.

Dated at New York, New York this 27th day of December, 1964.
 Witness Ed. G. Gorman
 Agent Daniel M. McGuffey
 I hereby agree that this application and the answers made to the Medical Examiner and the policy applied for shall constitute the entire contract between the parties hereto.
 Sig. of Applicant Louise Guffey
 P.O. Address 125 Broadway New York, New York
 Residence Flat Washington New York

NOTICE TO AGENT:
 Print here full name of applicant Louise Guffey

RECEIPT FOR ADVANCE PAYMENT OF PREMIUM

Received of None, who has applied to National Life Insurance Company for a policy of insurance of \$ 100,000 on the 3d day of September, 1963, the sum of 10.00 Dollars (\$ 10.00) being the first premium on such policy. Said payment is made subject to the terms and conditions of agreement 2 contained in said application, as per copy on the back of this receipt.

19

Agent

Exhibit D Annexed to Stipulation

B.S.A.

Policy No. 632,645 of the National Insurance Company of Vermont.

(Photostat Opposite)

Sheet 9

EDGAR T. WELLS

GENERAL AGENT
117 LIBERTY STREET
NEW YORK

No. —632645—

National Life Insurance Company

MONTPELIER, VT.

SUM INSURED—\$100,000—

INSURED—Florence Guggenheim—

PREMIUM—\$86,550.00—

DATE—December 27, 1934—

LIFE POLICY
With Annual Distribution
of Surplus

Single Payment

Edition of 1924

N.Y. WELLS 7/9

EXHIBIT "E" ANNEXED TO STIPULATION

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 1

Assignment of Policy No. 1226200

ON THE LIFE OF

Florence Guggenheim

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

For Value Received I hereby assign, transfer and set over the above described policy of insurance, together with all rights reserved to me as the insured under the said policy, or as the owner thereof, or as the beneficiary thereunder, or as the assignee thereof, and all sum or sums of money, interest, benefit and advantage whatsoever, now due or hereafter to become due to me by virtue thereof, unto

Madys G. Straus

No. Purchase Street New York
City Purchase State New York

It is hereby certified that the undersigned has not been declared a bankrupt and that no proceedings to declare the undersigned a bankrupt are now pending and that there has been no assignment of the said policy.

Witness my hand and seal

at New York in the state of New York

this 31 day of December 1934

Madys G. Straus Florence Guggenheim
Witness (L. S.)

Witness

(Sign in ink)

An Assignment of a Policy should be executed in duplicate, and the duplicate sent to the Home Office of the Company for record.

This form of Assignment is furnished by the Company. As the laws of the various states differ, it is urged that the Assignment be filled out and signed under the direction of some competent attorney who is familiar with the laws of the state in which it is to be executed.

The Company does not guarantee the validity of any Assignment.

SEND THIS DUPLICATE TO THE COMPANY.

Tightly Bound

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 2

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THE UNION CENTRAL LIFE INSURANCE COMPANY CINCINNATI, OHIO

HEREBY INSURES THE LIFE OF

1. Insured Florence Guggenheim in
2. Amount the amount of THIRTY FIVE THOUSAND Dollars,
3. Death payable on receipt of due proof of death of said insured during the continuance of this policy, less any indebtedness and advances hereon, at its Home Office in Cincinnati, Ohio, to the beneficiary hereinafter named.
4. Premium This policy is issued in consideration of a premium of thirty eight thousand forty nine & 30/100 Dollars.
5. Conditions All conditions, benefits and provisions stated on the subsequent pages are hereby made a part of this policy.
6. Date With respect to policy values and participation in profits, this policy shall be deemed to be dated the 1st day of December 19 34.

Issued at Cincinnati, Ohio, this 7th day of JANUARY 19 35

Richard S. Rust
Secretary

W. Howard Cox
President

Ben. H. H.
Agent

© 1934 A 1-1 (1)
© 1934 A 1-2 (1)

Single Premium Life
Annual Premium

59-7

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 3

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Section A.
Beneficiary and Ownership Provisions.

A.1. CHANGE OF BENEFICIARY. The insured shall have the right at any time, and from time to time, to change the beneficiary, by written notice in form acceptable to the Company, which will be furnished on request.

A.2. OWNERSHIP. The insured may exercise every right and receive every benefit reserved to the insured or the owner of the policy, including the right of assignment, and may agree with the Company to any change in or amendment of the policy, without the consent of any beneficiary except as may be otherwise provided in appointing such beneficiary.

A.3. BENEFICIARY. The net sum payable at the death of the insured shall be paid to the executor, administrator or assigns of the insured.

ABEIL
JMPSTW 34 HZM WPCG
EN

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 4

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Section B—Premiums and Dividends.

B1. PAYMENT OF PREMIUM. The premium shall be payable in advance; either at the Home Office, or to an authorized agent of the Company on delivery of a receipt signed by the President or Secretary and countersigned by each agent.

B2. DIVIDENDS. This policy shall participate in profits as apportioned by the Company. Beginning at the end of the first policy year dividends shall be declared annually during its continuance.

B3. DIVIDEND OPTIONS. The dividend for any year may be withdrawn in cash; or left to accumulate with interest compounded annually at three per cent, increased

from profits as apportioned by the Company, until the maturity of the policy, subject to withdrawal at any time; or applied to the purchase of paid-up non-participating additions to the policy, convertible into cash at any time for the reserve of the additions.

B4. AUTOMATIC DEDUCTION. If the owner of this policy shall not exercise any other such option the dividend shall be applied, on the expiration of thirty-one days after the anniversary of the policy, to the purchase of paid-up additions. At the death of the insured during the continuance of the policy, the pro rata part of the dividend for the current policy year and accumulations of dividends at interest shall be paid with the policy.

Section C—Policy Values.

C1. RESERVE BASIS. The reserve of this policy is computed on the American Experience Table of Mortality with interest at 3 1/4%.

C2. SURRENDER VALUE. The surrender value for each thousand dollars of insurance is equal to the reserve at the end of the policy year, counting cash; less surrender charges in the first to the fifth policy years inclusive, of \$27, \$21, \$14, \$12, \$10, \$8, \$6, \$4 and \$3 respectively.

C3. POLICY VALUES. The surrender value, less any indebtedness or advances on the policy, may be used at the option of the owner of the policy in either of the following ways as set forth in the table below.

C4. OPTION 1—LOAN. Borrowed or taken in advance in whole or in part on the sole security of the policy, on assignment thereof, less any indebtedness and previous advances on this policy, at six per cent interest payable

annually on the anniversary of the policy, interest to be discounted and paid in advance (Table 1).

Failure to repay any such advance or to pay interest shall void this policy whenever but not until the total indebtedness and advances hereon with interest shall equal or exceed the then loan value and not until one month after notice shall have been mailed by the Company to the last known address of the insured, and of the assignee, if any.

The loan value will be increased by the value of any paid-up additions.

Commencement of loans other than to pay premiums on policies in this Company may be deferred by the Company ninety days from the date of application therefor.

C5. OPTION 2—CASH. Withdrawn in cash on legal surrender of the policy (Table 2). The cash value will be increased by the value of any paid-up additions. Payment may be deferred by the Company ninety days from the date of application therefor.

Table of Values.

The values in these tables are on the basis of \$1,000 of insurance. If this policy is for insurance of more or less than \$1,000, the values are increased or reduced proportionately.

1. Loan, less interest to the first anniversary, available at any time during the policy year; or
2. Cash, available at the end of the policy year.

1st year	2nd year	3rd year	4th year	5th year	6th year	7th year
\$ 738	\$ 753	\$ 774	\$ 788	\$ 800	\$ 812	\$ 824
8th year	9th year	10th year	11th year	12th year	13th year	14th year
\$ 836	\$ 847	\$ 859	\$ 868	\$ 877	\$ 886	\$ 895
15th year	16th year	17th year	18th year	19th year	20th year	21st year
\$ 904	\$ 915	\$ 921	\$ 929	\$ 936	\$ 943	\$

2 A. 1-3 103
412

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 5

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Section D—Settlement Options.

D.1. SETTLEMENT OPTIONS. The owner of this policy, or the payee after the insured's death, so prior election having been made, may elect, by written notice to the Company at its Home Office, in form acceptable to the Company, which will be furnished on request, to have the net sum payable under this policy paid in any one of the following ways in full in a single sum.

D.2. OPTION 1—CERTAIN INSTALLMENTS. In equal semi-annual installments for any specified number of years (not exceeding twenty-five); the first installment being payable immediately, in accordance with the following table for each one thousand dollars of paid net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as apportioned by the Company.

Number of Installments	Minimum Amt. of Each Installment	Number of Installments	Minimum Amt. of Each Installment
2	\$507.50	14	\$60.50
3	343.33	15	61.33
4	261.19	16	62.19
5	211.99	17	63.19
6	176.33	18	64.33
7	148.31	19	65.31
8	126.31	20	66.31
9	108.31	21	67.31
10	93.31	22	68.31
11	81.31	23	69.31
12	71.31	24	70.31
13	63.31	25	71.31

D.3. OPTION 2—CONTINUOUS INSTALLMENTS. In equal annual installments, the first installment being payable immediately, for a period of five (5), ten (10) or twenty (20) years certain, and for as long thereafter as the payee shall survive. In accordance with the following table for each one thousand dollars of paid net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as apportioned by the Company, but not beyond the period of certain installments. The Company may require due proof that the payee is living before the payment of each or any installment hereunder is made.

Deceased Age of Payee When Policy Income Payable		Minimum Amount of Each Installment		
Male	Female	Installments Certain	Installments Certain	Installments Certain
10	10	\$44.50	\$43.50	\$41.74
11	11	44.77	43.77	41.94
12	12	44.88	43.88	42.06
13	13	44.99	43.99	42.18
14	14	45.10	44.10	42.30
15	15	45.21	44.21	42.42
16	16	45.32	44.32	42.54
17	17	45.43	44.43	42.66
18	18	45.54	44.54	42.78
19	19	45.65	44.65	42.90
20	20	45.76	44.76	43.02
21	21	45.87	44.87	43.14
22	22	45.98	44.98	43.26
23	23	46.09	45.09	43.38
24	24	46.20	45.20	43.50
25	25	46.31	45.31	43.62
26	26	46.42	45.42	43.74
27	27	46.53	45.53	43.86
28	28	46.64	45.64	43.98
29	29	46.75	45.75	44.10
30	30	46.86	45.86	44.22
31	31	46.97	45.97	44.34
32	32	47.08	46.08	44.46
33	33	47.19	46.19	44.58
34	34	47.30	46.30	44.70
35	35	47.41	46.41	44.82
36	36	47.52	46.52	44.94
37	37	47.63	46.63	45.06
38	38	47.74	46.74	45.18
39	39	47.85	46.85	45.30
40	40	47.96	46.96	45.42
41	41	48.07	47.07	45.54
42	42	48.18	47.18	45.66
43	43	48.29	47.29	45.78
44	44	48.40	47.40	45.90
45	45	48.51	47.51	46.02
46	46	48.62	47.62	46.14
47	47	48.73	47.73	46.26
48	48	48.84	47.84	46.38
49	49	48.95	47.95	46.50
50	50	49.06	48.06	46.62
51	51	49.17	48.17	46.74
52	52	49.28	48.28	46.86
53	53	49.39	48.39	46.98
54	54	49.50	48.50	47.10
55	55	49.61	48.61	47.22
56	56	49.72	48.72	47.34
57	57	49.83	48.83	47.46
58	58	49.94	48.94	47.58
59	59	50.05	49.05	47.70
60	60	50.16	49.16	47.82
61	61	50.27	49.27	47.94
62	62	50.38	49.38	48.06
63	63	50.49	49.49	48.18
64	64	50.60	49.60	48.30
65	65	50.71	49.71	48.42
66	66	50.82	49.82	48.54
67	67	50.93	49.93	48.66
68	68	51.04	50.04	48.78
69	69	51.15	50.15	48.90
70	70	51.26	50.26	49.02
71	71	51.37	50.37	49.14
72	72	51.48	50.48	49.26
73	73	51.59	50.59	49.38
74	74	51.70	50.70	49.50
75	75	51.81	50.81	49.62
76	76	51.92	50.92	49.74
77	77	52.03	51.03	49.86
78	78	52.14	51.14	49.98
79	79	52.25	51.25	50.10
80	80	52.36	51.36	50.22
81	81	52.47	51.47	50.34
82	82	52.58	51.58	50.46
83	83	52.69	51.69	50.58
84	84	52.80	51.80	50.70
85	85	52.91	51.91	50.82
86	86	53.02	52.02	50.94
87	87	53.13	52.13	51.06
88	88	53.24	52.24	51.18
89	89	53.35	52.35	51.30
90	90	53.46	52.46	51.42
91	91	53.57	52.57	51.54
92	92	53.68	52.68	51.66
93	93	53.79	52.79	51.78
94	94	53.90	52.90	51.90
95	95	54.01	53.01	52.02
96	96	54.12	53.12	52.14
97	97	54.23	53.23	52.26
98	98	54.34	53.34	52.38
99	99	54.45	53.45	52.50
100	100	54.56	53.56	52.62

*Age 6 and under.
A 15-6-3 (c)

Deceased Age of Payee When Policy Income Payable		Minimum Amount of Each Installment		
Male	Female	Installments Certain	Installments Certain	Installments Certain
25	49	\$35.56	\$34.57	\$30.18
26	41	35.77	34.77	30.41
27	43	35.88	34.88	30.63
28	45	35.99	34.99	30.85
29	47	36.10	35.10	31.07
30	49	36.21	35.21	31.29
31	51	36.32	35.32	31.51
32	53	36.43	35.43	31.73
33	55	36.54	35.54	31.95
34	57	36.65	35.65	32.17
35	59	36.76	35.76	32.39
36	61	36.87	35.87	32.61
37	63	36.98	35.98	32.83
38	65	37.09	36.09	33.05
39	67	37.20	36.20	33.27
40	69	37.31	36.31	33.49
41	71	37.42	36.42	33.71
42	73	37.53	36.53	33.93
43	75	37.64	36.64	34.15
44	77	37.75	36.75	34.37
45	79	37.86	36.86	34.59
46	81	37.97	36.97	34.81
47	83	38.08	37.08	35.03
48	85	38.19	37.19	35.25
49	87	38.30	37.30	35.47
50	89	38.41	37.41	35.69
51	91	38.52	37.52	35.91
52	93	38.63	37.63	36.13
53	95	38.74	37.74	36.35
54	97	38.85	37.85	36.57
55	99	38.96	37.96	36.79
56	101	39.07	38.07	37.01
57	103	39.18	38.18	37.23
58	105	39.29	38.29	37.45
59	107	39.40	38.40	37.67
60	109	39.51	38.51	37.89
61	111	39.62	38.62	38.11
62	113	39.73	38.73	38.33
63	115	39.84	38.84	38.55
64	117	39.95	38.95	38.77
65	119	40.06	39.06	38.99
66	121	40.17	39.17	39.21
67	123	40.28	39.28	39.43
68	125	40.39	39.39	39.65
69	127	40.50	39.50	39.87
70	129	40.61	39.61	40.09
71	131	40.72	39.72	40.31
72	133	40.83	39.83	40.53
73	135	40.94	39.94	40.75
74	137	41.05	40.05	40.97
75	139	41.16	40.16	41.19
76	141	41.27	40.27	41.41
77	143	41.38	40.38	41.63
78	145	41.49	40.49	41.85
79	147	41.60	40.60	42.07
80	149	41.71	40.71	42.29
81	151	41.82	40.82	42.51
82	153	41.93	40.93	42.73
83	155	42.04	41.04	42.95
84	157	42.15	41.15	43.17
85	159	42.26	41.26	43.39
86	161	42.37	41.37	43.61
87	163	42.48	41.48	43.83
88	165	42.59	41.59	44.05
89	167	42.70	41.70	44.27
90	169	42.81	41.81	44.49
91	171	42.92	41.92	44.71
92	173	43.03	42.03	44.93
93	175	43.14	42.14	45.15
94	177	43.25	42.25	45.37
95	179	43.36	42.36	45.59
96	181	43.47	42.47	45.81
97	183	43.58	42.58	46.03
98	185	43.69	42.69	46.25
99	187	43.80	42.80	46.47
100	189	43.91	42.91	46.69
101	191	44.02	43.02	46.91
102	193	44.13	43.13	47.13
103	195	44.24	43.24	47.35
104	197	44.35	43.35	47.57
105	199	44.46	43.46	47.79
106	201	44.57	43.57	48.01
107	203	44.68	43.68	48.23
108	205	44.79	43.79	48.45
109	207	44.90	43.90	48.67
110	209	45.01	44.01	48.89
111	211	45.12	44.12	49.11
112	213	45.23	44.23	49.33
113	215	45.34	44.34	49.55
114	217	45.45	44.45	49.77
115	219	45.56	44.56	49.99
116	221	45.67	44.67	50.21
117	223	45.78	44.78	50.43
118	225	45.89	44.89	50.65
119	227	45.99	44.99	50.87
120	229	46.10	45.10	51.09
121	231	46.21	45.21	51.31
122	233	46.32	45.32	51.53
123	235	46.43	45.43	51.75
124	237	46.54	45.54	51.97
125	239	46.65	45.65	52.19
126	241	46.76	45.76	52.41
127	243	46.87	45.87	52.63
128	245	46.98	45.98	52.85
129	247	47.09	46.09	53.07
130	249	47.20	46.20	53.29
131	251	47.31	46.31	53.51
132	253	47.42	46.42	53.73
133	255	47.53	46.53	53.95
134	257	47.64	46.64	54.17
135	259	47.75	46.75	54.39
136	261	47.86	46.86	54.61
137	263	47.97	46.97	54.83
138	265	48.08	47.08	55.05
139	267	48.19	47.19	55.27
140	269	48.30	47.30	55.49
141	271	48.41	47.41	55.71
142	273	48.52	47.52	55.93
143	275	48.63	47.63	56.15
144	277	48.74	47.74	56.37
145	279	48.85	47.85	56.59
146	281	48.96	47.96	56.81
147	283	49.07	48.07	57.03
148	285	49.18	48.18	57.25
149	287	49.29	48.29	57.47
150				

Age over 50 males as for Age 60

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 6

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Section E — General Privileges and Conditions.

§1. CONTRACT. This policy, together with the application, a copy of which is attached hereto, shall constitute and contain the entire contract. All statements shall, in the absence of fraud, be deemed representations and not warranties. No such statement shall void this policy or be used in defense to a claim thereunder, unless it is contained in the written application, and unless a copy of such application is attached to the policy when issued.

§2. INCONTINGENT. This policy shall be incontestable after two years from the date of issue except for non-payment of premium, and except as to provisions, if any, relating to benefits in the event of disability or granting additional insurance in event of death by accidental means.

§3. AGE. In the event of the age of the insured being misstated, the amount payable shall be such as the premium paid would have purchased at the correct age.

§4. SUCCESSION. Benefits within two years from the date of issue of this policy, whether the insured was male or female, is a risk not assumed hereunder and the amount payable shall be a sum equal to the premium paid in cash hereto.

§5. AUTHORITY. None of the terms of this policy shall be modified, nor any forfeiture under it waived, save by an agreement in writing, signed by the President, a Vice-President, the Secretary or an Assistant Secretary, whose authority for this purpose shall not be delegated.

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 7

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Application for Insurance to INSURANCE CENTRAL LIFE INSURANCE COMPANY, OF CHICAGO, ILL., - PART I.

1. a Full name of applicant..... LORENCE J. JUGAENHEIM Print Name

b. Residence { No. _____ Street _____
(or R. F. D. No. _____, miles W. _____ direction from _____)
City of Pitt Washington County of _____

Name George Allen State Mass. City Yonk. How long have you lived there? 18 years & former residence Ellen St. • P.O. Address for notices 120 Broadway Yonk. N.Y.

2. Give place and date of birth. Town Philadelphia Date June

No. 4434 Day 3 Yr. 1863 Age nearest birthday 71

2. 4 Amount of Insurance, \$ 200,000 ; Plan Whole Life
 New Programs Living ; not payable ; no
 Disability: Widows ☐ Family ☐
 of Proceeds only ☐ ☐
 Please check mark after Change Made.

6000 Premiums *single* payable *10/10/08*
 (Regular) ☐ Annually ☐
 (Disability Benefits) ☐ Semi-annually ☐
 (Death Amount) ☐ Quarterly ☐
 13000.00 ☐ on ☐
 4000.00 ☐ With Pen. Rate/Summ. ☐
 2000.00 ☐ Policy to be endorsed in usual manner, unless otherwise indicated.

4. a Primary Boundary

Relationship to applicant
 Contingent Beneficiary
 Birthday of Beneficiary
 Mo. Yr.
 Day, Mo. Yr.
 Age
 (See over)
 (Print name as it is to appear in the policy.)

Ownership and privileges to change the beneficiary shall vest in (a) the insured, (b) primary beneficiary, (c) the insured and primary beneficiary jointly. Rule not all except one of (a), (b) and (c).

8. a How many social flights (including glider) have you made in the last 12 months? none In the last 24 months? twice

b Do you expect to make social (including glider) flights as passenger or otherwise?		Amount	Fees	Date
c. a Have you ever applied to this	b Name of Company			

What insurance do you now carry in other companies? (If none, so state). *none*

Date	Plan	Name of Company	What insurance in this or any other company will be discontinued, reduced or changed if insurance now sought for is turned?
		Name of Company	What insurance in this or any other company will be discontinued, reduced or changed if insurance now sought for is turned?

d Have you applied, or have you a present intention to apply, for other insurance in any other company? (If not, so state)	448 - Mutual	d Name of Company	2 Amount	Plan
				Plan

7. a Has first premium been paid?	a	b I have settled the premium by payment of \$..... for which I have received blanking receipt form 431 A, to the terms of which I agree.
b If so, state the amount paid, as follows:		

It is agreed that any insurance issued on this application shall not take effect until the policy has been delivered to the applicant and the first premium thereon has been paid and accepted by the Company or its authorized agent during the applicant's lifetime and good health.

provision, however, that if the applicant pays the first premium in advance and so declares at Question 7 heretofore and activates thereafter binding receipt in the form attached hereto (which is the only form of receipt for payment of first premium in advance authorized by the Company) the terms of said binding receipt shall apply. I also agree that payment of the first premium shall keep the insurance in force only to the date fixed in the policy for payment of the next premium.

I agree to be examined by the Company's Medical Examiner, and that my statements in this application and to the Medical Examiner are made for the purpose of obtaining this insurance. I understand that my note accepted by the Company in connection with the first year's premium must be secured to his satisfaction.

0.11.1954

1225190
Selecting Agent.

Dated at Calcutta this 10 day of June 1934

District Agent (if any):
THE O.P.S. B. MARKET AGENCY, INC.

.....
General Agent or Manager,
.....
Signature of Applicant *X* *Thomas Duffell*

SEE QUESTIONS ON REVERSE

[illegible]

Samuel Metzger
Spicking Agent.

Direct Agent (if any):
THE OLSB. BUDGET AGENCY, Inc.

General Agent or Manager,

1225190

Dated at New York on 27 day of Dec 1838

Signature of Applicant *X Thomas Safford*

SIZE QUESTIONS ON REVIEW

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 8

Agents are not authorized to Grant Premiums,
Make or Alter Contracts or Waive Forfeitures.

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

RECEIVED thirty eight thousand forty nine & 30/100 DOLLARS, \$38049.30

being the Premium (including premiums for Disability and Double Indemnity Benefits, if any) upon

Policy No. 1226200, issued upon the life of Florence Guggenheimer

continuing until Policy is canceled or otherwise terminated in writing when same may be so addressed as

This receipt is not valid unless Premium is paid, and the receipt is not valid unless the day of payment is

The Charles B. Knight Agency

of which address is as follows:

Authority to accept payment hereof on my

signature and to provide therefor in hereby given

to

Charles B. Knight Agency, Inc.

Residence 1226200, of the UNION CENTRAL LIFE INSURANCE CO.

Paid at

this day of

19

Agent.

Richard S. Rine
Secretary

Exhibit E Annexed to Stipulation

Policy No. 1,226,200 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 9

or its Agent relative to any settlement under this policy.

38.1
1226200

**THE UNION CENTRAL
LIFE INSURANCE COMPANY**

CINCINNATI, OHIO

Insurance on the Life of

Florence Guggenheim

Amount \$ 45,000.00

Date of Issue January 7, 1935

Premium \$ 38,049.30

Agent
The Charles B. Knight Agency
Gen'l Agt.

Kind

4221 A
Dated 1934

Single Premium Life.
Annual Dividends.

11

Tightly Bound

EXHIBIT "F" ANNEXED TO STIPULATION

Policy No. 8,740,620 of the Prudential Life Insurance Company.

(Photostat Opposite)

Sheet 1

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THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY
EXCESSIVE DUTY-FIELD, PROVIDENT, HOME OFFICE, NEWARK, NEW JERSEY

ORIGINAL

ASSIGNMENT OF POLICY

NOTE—In the execution of assignments, the Beneficiary (if any be designated in the policy) should join in the execution of the assignment if of legal age; if a minor the Beneficiary's interest can only be assigned by the Beneficiary's legally appointed guardian, with authority to make the assignment from the court appointing him as guardian, in which event certified copies of such authority and letters of guardianship should accompany the assignment.

Wherever an assignment is made by or to an executor or administrator, a certified copy of the letters testamentary or of administration should be filed with the assignment.

When an assignment is executed by a corporation, its seal should be affixed or its absence accounted for, and the authority of the officers acting on behalf of the corporation should be evidenced by the corporate form of acknowledgment on the reverse side.

NOTICE—The Prudential Insurance Company of America shall not be deemed to have knowledge of the assignment until the original or duplicate is filed at the Home Office of the Company; in compliance with the rules of the Company requiring that if a policy shall be assigned, the assignment must be in writing. The Company will not assume any responsibility for the validity of an assignment.

It is further to be understood that the assignor should be named as the Home Office, the duplicate to be received by the Company and the original returned.

If this assignment shall be executed, the assignor must be in writing and the Company shall not be required to action such assignment until the original assignment is submitted on the back and forwarded to the Home Office of the Company to be recorded. The Company will not assume any responsibility for the validity of such return.

For Value Received, I hereby assign and transfer unto

Alfred S. Stevens *Alfred S. Stevens*
Princeton *Princeton* *N.J.* *N.J.*

Street City State Complete Address of Assignee

insurance known as No. *8749620* issued by THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, upon the life of *Frances Suggs* at *Port Washington, New York*

now due and which may hereafter accrue thereon, and all benefit and advantage to be had or derived therefrom; subject to the conditions of the said policy, and to the rules and regulations of said Company. This assignment is made expressly subject to the lien of the Company on said policy for any indebtedness of the insured or any prior assignee to said Company existing at the time this assignment is filed with said Company and in making settlement of the said policy there shall first be deducted all such indebtedness.

Each person executing this assignment represents to said Company that he (or she) has attained to majority according to the laws of the State or Province in which he (or she) resides, or that he (or she) is empowered by law to execute this form even though majority has not been attained.

Witness my hand and seal this *27th* day of *December* one thousand nine hundred and *thirty-four*.

Thomas Suggs (SEAL)

Signature of Beneficiary

I hereby certify that the above assignment was signed in my presence by the insured under the policy mentioned therein.

If the signature of a beneficiary or prior assignee is required in this form, the Manager, Superintendent or Assistant Superintendent personally witness the signature and sign it following certifies.

I hereby certify that the signature of the beneficiary (or prior assignee) to the above assignment was written in my presence and I believe that he (or she), at the time of making this assignment, is the person to whom said policy is payable.

If the policy is not in effect when the assignment is made, the form before should be completed by him, and he should affix his seal.

State or Province of *New York*

County of *New York*

On this *27th* day of *December*, 19*34*, before me, a

personally appeared *Alfred S. Stevens*

known to me to be the person whose name is subscribed to the foregoing assignment, and having been made known to me, the cost-

less thereof, he thereupon acknowledged that he executed the same as his free and voluntary act and deed for the uses

and purposes therein expressed.

WIT / MYSELF AND VICE PRESIDENT

My official commission expires *January 30, 1935*

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

In accordance with its rules, as stated above, has retained the duplicate of this assignment.

Witness my hand and seal this *27th* day of *December*, 19*34*.

Edward J. Suggs

Per *BS*

Notary Public

Notary Public

Notary Public

Notary Public

Notary Public

Notary Public

Notary Public

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Notary Public

Exhibit F Annexed to Stipulation

Policy No. 8,740,620 of the Prudential Life Insurance
Company.

(Photostat Opposite)

Sheet 2

State or Province of _____
City of _____
On this _____ day of _____, 19____, before me, a _____
personally appeared _____ and _____
being first duly sworn, did depose and say that they are respectively the _____ President and _____
Secretary, and who are known to me to be respectively the _____ President and _____
Secretary of _____ The corporation that
executed the foregoing assignment, and to be the persons who executed said assignment in behalf of the said corporation, and acknowledged
that such corporation executed the same, that they know the seal of said corporation and that the seal affixed to said assignment
is the corporate seal of said corporation, and that the said assignment was signed and the seal affixed in behalf of said corporation by
_____ and _____
of its Board of Directors, and the said _____
signed their names thereto by like order and acknowledged the said instrument to be the free and voluntary
act and deed of said corporation, for the uses and purposes therein mentioned.
In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.
My official commission expires _____

Notary Public

RELEASE

Date _____ 19____

For Value Received, the assignment dated _____ of Policy No _____
is hereby fully canceled.
Each person executing this release represents to The Prudential Insurance Company of America that he (or she) has attained to
majority according to the laws of the State or Province in which he (or she) resides, or that he (or she) is empowered by law to execute
the same even though majority has not been attained.

Witness

Assignor

Witness

Assignee

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

in accordance with its rules, has filed the original of the above release.

President

147

4/2

Tightly Bound

Exhibit F Annexed to Stipulation

Policy No. 8,740,620 of the Prudential Life Insurance
Company.

(Photostat Opposite)

• Sheet 3

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The Prudential Insurance Company of America

COMPANIES INCORPORATED IN THE UNITED STATES

In Consideration of the Application for this Policy, which is hereby made part of this contract, a copy of which Application is attached hereto, and of the payment, in the manner specified, of the premium herein stated, hereby insures the life of the person herein designated as the Insured, for the amount named herein, payable as specified, subject to the provisions on the following pages, which are hereby made part of this contract.

The Insured FLORENCE GUGGENHEIM

Amount of Insurance ---ONE HUNDRED THOUSAND--- Dollars,
payable immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy and upon legal surrender of this Policy, all at the Home Office of the Company, in Newark, New Jersey.

Payable to THE EXECUTORS, ADMINISTRATORS OR ASSIGNS OF THE INSURED.

If there be no Beneficiary living at the death of the Insured the amount of insurance shall be payable to the executors, administrators or assigns of the Insured, unless otherwise provided in the Policy. The right to change the Beneficiary has ---- been reserved by the Insured.

Single Premium ---EIGHTY-FOUR THOUSAND, EIGHT HUNDRED-EIGHTY-SIX AND 00/100--- Dollars,
payable in one sum on the delivery of this Policy, the receipt of which premium is hereby acknowledged.

In Witness Whereof, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this Policy to be signed by its President and its Secretary, and to be duly attested, this TWENTY-SEVENTH day of DECEMBER, one thousand
also hundred and THIRTY-FOUR.

William W. Whitsett *Edward Duffell*

AGE 71

Single-Payment Life Policy—Annual Dividends. One Premium Payment.

Exhibit F Annexed to Stipulation

Policy No. 8,740,620 of the Prudential Life Insurance Company.

(Photostat Opposite)

Sheet 4

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:

GENERAL PROVISIONS.

Payment of Premiums.—The premium on this Policy is payable at the Home Office of the Company, but may be paid to an agent of the Company on or before the date when due. If the premium is not paid when due, this Policy shall be void.

Change of Beneficiary.—If the right to change the Beneficiary has been reserved the Insured may at any time while this Policy is in force, by written notice to the Company or its Home Office, change the Beneficiary or Beneficiaries under this Policy, such change to be subject to the rights of any previous assignee and to the Company's discretion only when a provision to that effect is contained in the Policy by the Company, whereupon all rights of the former Beneficiary or Beneficiaries shall cease.

Assignment.—Any assignment of this Policy must be in writing, and the Company shall not be deemed to have knowledge of such assignment unless the original or a duplicate thereof is filed at the Home Office of the Company. The Company will not assume any responsibility for the validity of an assignment.

Interest.—If within two years from the date issued the Insured, whether male or female, shall die by suicide, the liability of the Company shall not exceed the amount of the premium paid on this Policy.

Insurability.—This Policy shall be insurable after two years from its date of issue, except for non-payment of the premium, but if the age of the Insured be advanced the amount of premium payable under this Policy shall be such as the premium would have been had at the current age.

Insolvent.—Any indebtedness to the Company on account of this Policy will be deducted from any payment or payments or in any settlement under the Policy.

Modifications, etc.—No condition, provision or privilege of this Policy can be waived or modified in any way except by an endorsement herein signed by the President, one of the Vice Presidents, the Secretary, one of the Assistant Secretaries, the Attorney, the Assistant Attorney or one of the Assistant Attorneys. No modification or change shall be made in this Policy except such as is in accordance with the laws of the State in which the same is issued. No Agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or by making or receiving any representation or information.

Rule of Reserve and Contingencies.—The reserve upon this Policy for which funds are to be held shall be computed upon the American Experience Table of Mortality with three-and-one-half per cent. interest per annum by the net level premium method. All computations in accordance with the terms of this Policy involving net premium or reserve based on a mortality table and interest shall be made upon the basis here stated.

Entire Contract Contained in This Policy.—This Policy together with the Application, a copy of which is attached hereto, contains and constitutes the entire contract between the parties hereto, and all statements made by the Insured shall be in the absence of fraud be deemed representations and not warranties, and no statement shall avoid the Policy or be used as a defense to a claim thereunder unless it be contained in the Application for the Policy and unless a copy of such Application be endorsed upon or attached to the Policy when issued.

DIVIDEND PROVISIONS.

Annual Dividends.—Annually, during its continuance in force, the proportion of the divisible surplus accruing upon this Policy shall be ascertained and apportioned by the Board of Directors and credited to this Policy at the end of the policy year as a dividend. Such dividend shall be (1) paid in cash upon written request of the Insured in any sum up to the amount of the dividend; or (2) left to accumulate to the credit of the Policy with interest compounded annually at the rate of three and one-half per cent. plus such additional interest as the Company may declare on such funds and payable at maturity of the Policy or withdrawable in cash on any anniversary of the Policy. Such paid-up addition may be surrendered at any time for its full reserve value of the time of such surrender. The Company reserves the right to defer the payment of any such surrender value for a period not exceeding sixty days after application for the Policy and unless a copy of such Application be endorsed upon or attached to the Policy when issued.

Pay Mortum Dividend.—If this Policy be continued in force and if it shall become a whole by the death of the Insured after one year from its date, such annual dividend, according to the dividend scale current at the date of death, as would have been payable if the Insured had been living on the anniversary date of the Policy next succeeding the death of the Insured shall be paid in addition to the dividend of the year in which the death occurred.

Option to Pay Forfeiture.—Owing to the low rate of premium at which policies of this nature are issued, the surplus accruing thereon will probably not be sufficient to enable the Company to credit any dividend to this Policy before the end of the current policy year (from its date).

LOAN PROVISIONS.

If this Policy be continued in force, the Insured may borrow from the Company, without the consent of the Beneficiary, if any named herein, with interest at the rate of six per cent. per annum, payable at the end of each policy year, on the sole security of this Policy, an amount up to the limit of the Cash Surrender Value hereafter specified together with the full reserve on account of any outstanding paid-up additions, after deducting therefrom all other indebtedness on account of this Policy, by making written application for the loan and assigning the Policy to the Company as security. Failure to repay any such indebtedness or to pay interest shall not void the Policy unless the total indebtedness thereon to the Company shall equal or exceed the loan value at the time of such failure, nor until one month after notice to that effect shall have been mailed by the Company to the last known address of the Insured, of the person to whom the loan was made and of the assignee of record at the Home Office of the Company, if any. The Company reserves the right to defer any loan, other than to pay premiums on policies in the Company, for a period not exceeding sixty days after application for such loan.

Option.—At any time during the continuance of this Policy a statement of any outstanding indebtedness on account of the Policy will be furnished on request.)

CASH SURRENDER VALUE.

If this Policy be legally surrendered to the Company within three months after the end of one year from its date or of any year thereafter, the Company will pay thereunder the sum indicated in the following table together with the full reserve on account of any outstanding paid-up additions purchased by dividends and less any indebtedness to the Company on account of this Policy. The Company reserves the right to defer the payment of any Cash Surrender Value for a period not exceeding sixty days after application for such Cash Surrender Value.

TABLE OF CASH SURRENDER AND LOAN VALUES.
(Values subject to reduction on account of any outstanding indebtedness as hereafter provided.)

AT THE END OF	CASH SURRENDER AND LOAN VALUES PER \$1000		AT THE END OF		CASH SURRENDER AND LOAN VALUES PER \$1000	
	1 Year	2 Years	11 Years	12 Years	13 Years	14 Years
1 Year	7.85				8.662	
2 Years	7.55				8.78	
3 Years	7.25				8.87	
4 Years	7.06				8.96	
5 Years	6.87				9.05	
6 Years	6.71				9.13	
7 Years	6.55				9.21	
8 Years	6.40				9.22	
9 Years	6.25				9.37	
10 Years	6.10				9.41	

The Cash Surrender and Loan Values stated in the following table apply to a policy of \$1000. If the amount of loan made under this Policy be more or less than \$1000, the Cash Surrender and Loan Values available in any year will be proportionately greater or less.

The Cash Surrender and Loan Values stated in the following table apply to a policy of \$1000. If the amount of loan made under this Policy be more or less than \$1000, the Cash Surrender and Loan Values available in any year will be proportionately greater or less.

116

Exhibit F Annexed to Stipulation

Policy No. 8,740,620 of the Prudential Life Insurance
Company.

(Photostat Opposite)

Sheet 5

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PROVISIONS AS TO MODES OF SETTLEMENT AT MATURITY.

The Issued may at any time while this Policy is in force subject to the rights of any assignee and with the prior consent of the Company, designate any one of the following options or combinations of such options as the manner in which the amount of insurance shall be payable in case of death, and the Company will then adhere to the Policy that payment shall be made according to the option or options designated, but if the Insured shall have made no such designation, the Beneficiary shall have the right of designation; provided, however, that in no event shall Option 1 or 2 be available to an individual Beneficiary if the amount of each installment payable thereunder to such Beneficiary would be less than \$10, nor shall Option 3 or 4 be available if the amount of insurance payable be less than \$1000 and none of the options herein provided shall be available if the Beneficiary be a corporation or a firm.

Option 1. Monthly Installments for Definite Number of Years.—Said amount of insurance or a part thereof to be payable in equal monthly installments, each installment of the amount stated for the definite number of years selected, together with dividend, if any, according to the following table:

Number of Years During Which Installments are Paid	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
Amount of Monthly Installment Payable	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00

Option 2. Monthly Installments for Definite Number of Years and Continuously Thereafter.—Said amount of insurance or a part thereof to be payable in equal monthly installments, each installment of the amount applying to the rate of the Beneficiary and to the age when the first installment becomes payable, together with dividend, if any, and payable during the definite number of years selected, and together so long as the Beneficiary shall live, as specified in the following table:

Amount of Monthly Installment Payable per \$1000 of Insured	Age at Maturity of Insured When First Installment is Payable																					
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
1 Year	\$3.69	\$3.72	\$3.74	\$3.77	\$3.80	\$3.83	\$3.86	\$3.89	\$3.92	\$3.94	\$3.97	\$4.00	\$4.03	\$4.06	\$4.09	\$4.12	\$4.15	\$4.17	\$4.20	\$4.23	\$4.26	\$4.28
5 Years	3.66	3.70	3.73	3.76	3.79	3.82	3.85	3.88	3.91	3.94	3.97	4.00	4.03	4.06	4.09	4.12	4.15	4.17	4.20	4.23	4.26	4.28
10 Years	3.64	3.68	3.70	3.73	3.76	3.79	3.82	3.85	3.88	3.91	3.94	3.97	4.00	4.03	4.06	4.09	4.12	4.14	4.16	4.19	4.22	4.24

Option 3. Amount of Insurance Left with the Company.—Said amount of insurance or a part thereof, but not less than \$1000, to be left with the Company subject to withdrawal on demand or payment as provided in the Policy, and the Company will pay thereon, so long as the said amount or add portion thereof remains with the Company, interest at the relative rate of three and one-half per cent. per annum, together with dividend, if any.

Option 4. Partial Installments until the Amount of Insurance with Interest and Dividends is Exhausted.—Said amount of insurance, or a part thereof, but not less than \$1000, together with interest at the rate of three and one-half per cent. per annum on the average balance remaining with the Company, and dividends as accumulated and expensed by the Board of Directors, to be payable in equal, semi-annual, quarterly or monthly installments of at least \$10 each, the aggregate of which during any twelve-month period shall amount to at least six per centum of said amount of insurance, or said part thereof, as the case may be, together with a final partial payment of any fraction of an installment necessary to exhaust the balance remaining. If the Beneficiary dies before the payments are exhausted, and if there is an unpaid balance designated by the Insured, the balance then remaining unpaid with current interest, if any, shall be paid in one sum to the estate or to the assignee of the Beneficiary.

Annual, Semi-Annual or Quarterly Installments, computed at the rate of three and one-half per cent. interest per annum compounded annually, will be paid upon request in line of the monthly installments provided under Options 1 and 2, when the Insured shall have otherwise directed in writing.

Unpaid Installments at Death of Beneficiary.—If one or more installments shall actually be paid in accordance with the provisions of Option 1 or 2 above and if the Beneficiary shall die before all installments payable during the definite number of years stated shall have been paid, and if there be no subsequent Beneficiary designated by the Insured, each unpaid installment will be commuted in the rate of three and one-half per cent. interest per annum compounded quarterly for monthly installments and annually for other installments and paid in one sum to the estate or assignee of the Beneficiary.

Dividends with Installments or on Amount Left with the Company.—If said amount of insurance or a part thereof be payable in installments under Option 1 or 2 or be left with the Company under Option 3, such dividends will be paid as may be determined and approved by the Board of Directors from the surplus earnings, on account of amounts so payable, or so left, as the case may be, but no dividends will be declared on account of installments payable under Option 3 after the expiration of the definite number of years selected for installment payments under such Option.

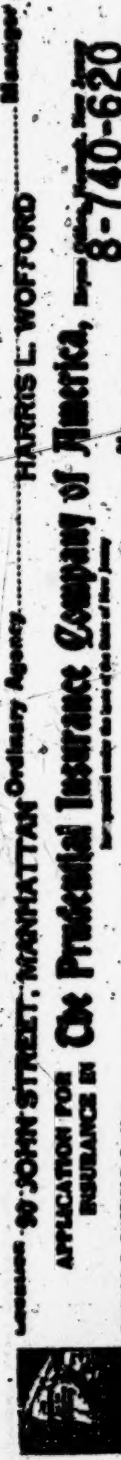
Exhibit F Annexed to Stipulation


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Policy No. 8,740,620 of the Prudential Life Insurance Company.

(Photostat Opposite)

Sheet 6

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 OFFICES 30 JOHN STREET, MANHATTAN Ordinary Agency HARRIS L. WOFFORD
MANAGER
APPLICATION FOR THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, 8-740-620
INSURANCE IN
New York under the laws of the State of New Jersey

1 What is your FULL name? (Please print) Florence Guppenheim

2 What is your present occupation or occupation? none

3 (PLEASE PRINT) No. Street City or town State

4 (If no postal service at this address, give post office and county name.)

5 (If no postal service at this address, give post office and county name.)

4 Do you intend changing your present
company? If yes, state particulars.

5 Do you contemplate taking aerial flight
within the next twelve months?

11 (PLEASE PRINT)
No. 12-0 Street Broadway 345 floor
City or town New York State New York

18 Do you intend living or traveling in Alaska or in any other possessions of the United States, or in any country except the United States or Canada? If yes, state particulars.

no

19 Name of firm or company.

20 Nature of business.

21 To what address are premium notices or other communications to be sent? If this question is not answered they will be sent to the residence address. (Please Print.)

120 Broadway New York City

17	Where have you lived during the past three years? State address in full.	Port Washington, New York
18	Has any company or association ever declined to grant life insurance on your life? If answer is yes, give name of company and date.	No person ever

\$100,000.00

Including this

No

Yes

Is the insurance applied for intended to replace any policy (Ordinary, Industrial or Life) which has been or ever was discontinued in this or another State?

Is the insurance applied for intended to replace any policy (Ordinary, Industrial or Life) which has been or ever was discontinued in this or another State?

[illegible][illegible]

12. If not Standard, what rating (C or D) has been quoted you for Accident?	13. If not Standard, what rating (C or D) has been quoted you for Death Benefit, if applied for?	14. Amount to be payable at your death? (PLEASE PRINT FULL NAME.)	15. Age of Beneficiary	16. Relationship to person to be insured	17. Present residence	18. Do you still own the property on which this policy is written?	19. Do you still own the property on which this policy is written?
12. If not Standard, what rating (C or D) has been quoted you for Accident?	13. If not Standard, what rating (C or D) has been quoted you for Death Benefit, if applied for?	14. Amount to be payable at your death? (PLEASE PRINT FULL NAME.)	15. Age of Beneficiary	16. Relationship to person to be insured	17. Present residence	18. Do you still own the property on which this policy is written?	19. Do you still own the property on which this policy is written?

60346

I HEREBY DECLARE that all the statements and answers to the above questions are complete and true, and I agree that the foregoing, together with this declaration, as well as the statements and answers made or to be made to the Company's Medical Examiner or in my declaration in line of medical examination, shall constitute the application and become a part of the contract of insurance entered into between me and the Company, and that no appeal lies proper in kind or in law from the same. I further agree that the same herein contained for shall be accepted subject to the privileges and provisions therein contained. Dated 12-24-2020 at New York, New York

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[illegible][illegible]

Exhibit F Annexed to Stipulation

Policy No. 8,740,620 of the Prudential Life Insurance Company.

(Photostat Opposite)

Sheet 7

B

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BECAUSE OF THE

Whenever you change your address notify the Company at Newark, New Jersey. Always state your new address and the number of your policy.

G. P. L.

LN

950 3901-6

100 6-7L

PAGE 04 OF 01

NOTE—Any change of beneficiary shall take effect only upon endorsement on this Policy by the Company at the Home Office.

[illegible]

EXHIBIT "G"-ANNEXED TO STIPULATION

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 1

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SOCIETY SHOULD BE NOTIFIED AT ONCE OF ANY
CHANGE IN ADDRESS OF THE ASSIGNEE HEREIN.

FORM OF ABSOLUTE ASSIGNMENT.

to be attached to and retained with the policy for use as evidence when required to prove

FOR ONE DOLLAR, to me in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer and set over Policy No. 9687735 on the life of myself issued by

THE EQUITYABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES with all rights therein, and with all money now or hereafter due or payable thereon, and all dividends, options, benefits or advantages derived therefrom, including the right to surrender said policy at any time and to receive and receipt for the surrender value thereof, to

Harry F. Suggenheim, Son

whose P. O. address is Port Washington, New York

and for the consideration above expressed I do also for his executors and administrators, guarantee the validity and sufficiency of this assignment to the assignee named herein. his executors, administrators and assigns; and my title to the said policy will forever warrant and defend.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of December 1934

State of New York

County of New York

Harry F. Suggenheim

On this 27th day of December 1934 at Port Washington in the year of our Lord 1934 before me personally came Harry F. Suggenheim in the to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

NOTARY PUBLIC NEW YORK COUNTY, ss. or they)
CLERK'S NO. 53 REGISTER'S NO. 5-1-3

COMMISSION EXPIRES MARCH 30, 1936

WITNESSES WHEN SIGNED BY A CORPORATION, CORPORATE ACKNOWLEDGMENT ON REVERSE SIDE
HEREOF MUST BE FURNISHED.

NOTARY
SEAL

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 2

CORPORATE ACKNOWLEDGMENT

OF _____
ITY OF _____ } ss.

On the _____ day of _____ in the year 19____, before me personally came

(and)

known, who, being by me duly sworn, did depose and say that _____ reside in _____
(he, she or they)

(and)

(respectively)

_____ are the _____
(he, she or they)

(and)

_____ the corporation described in and

executed the instrument on the reverse side hereof, that _____ know the seal of said
(he, she or they)

tion; that the seal affixed to said instrument is such corporate seal; that it was so affixed

er of the Board of Directors of said Corporation; and that _____ signed _____ name
(he, she or they) (his, her or their)

by like order.

(Notary sign here) _____

NOTARY
SEAL

SOCIETY ASSUMES NO RESPONSIBILITY FOR THE VALIDITY OF ANY ASSIGNMENT.

IMPORTANT

There should be attached to and filed with the duplicate assignment, a copy of a resolution by the Board of Directors, certified by the Secretary or other authorized officer, under the seal of the corporation, authorizing the executing officer to assign the policy for the benefit of this corporation.

Tightly Bound

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 3

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THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

A MUTUAL COMPANY

ORGANIZED JULY 26, 1859

HEREBY INSURES THE LIFE OF

—FLORENCE SUGG—
(NAME CALLED FOR SERVICE)

And agrees to pay at its Home Office in the City of New York

—TEN THOUSAND THOUSAND— Dollars,
(NUMBER CALLED FOR FACE ALREADY)

to the Insured's executors or administrators beneficiary
(with the right to the Insured to change the beneficiary or assign this policy)

upon receipt of due proof of the death of the Insured, provided this policy is then in force and is then surrendered properly released.

This insurance is granted in consideration of the payment in advance to the Society of a single premium of
One hundred seventy thousand seven hundred seventy-eight and 00/100 Dollars.

THE PROVISIONS of the subsequent pages hereof form a part of this contract as fully as if recited at length over the signature hereto affixed. This policy is executed at the Home Office of the Society in New York on its date of issue, the eight day of January, 19 35

EXAMINED BY

Wm. H. ... Secretary.

Thomas A. ... President.

Amos ...
AMT. RESERVE.

* 2024, 23, 4,
Single Premium.

INSURANCE PAYABLE AT DEATH, SINGLE PREMIUM,
ANNUAL DIVIDENDS.

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 4

SECOND PAGE.

(Entries on this page are to be made only by the Society at its Home Office in New York.
No other entries will be recognized.)

CHANGE OF BENEFICIARY REGISTER.

ENDORSED	BENEFICIARY	ENDORSED BY

SECOND PAGE.

Tightly Bound

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 5.

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THIRD PAGE

INCONTESTABILITY AND FREEDOM OF TRAVEL, RESIDENCE AND OCCUPATION.

This policy shall be (a) **INCONTESTABLE** after it has been in force during the lifetime of the Insured for a period of two years from its date of issue, and (b) **FREE FROM RESTRICTIONS** on travel, residence, occupation or military or naval service.

PARTICIPATION IN DIVIDENDS.

The proportion of divisible surplus accruing upon this policy shall be ascertained annually. At the end of the first and each subsequent policy year any surplus apportioned by the Society to this policy as a Dividend shall, at the option of the Insured, be:

1. Paid in cash;
2. Applied to the purchase of paid-up Additional Insurance, and the Insured may at any time surrender such Additional Insurance and receive the cash value thereof which shall not be less than the original cash Dividend; or
3. Left to accumulate at 3% interest, compounded annually, and if in any year the Society declares that funds held under this Option shall receive interest in excess of 3% per annum the accumulations hereunder shall be increased by an Excess Interest Dividend in an amount to be determined and apportioned by the Society. Any Dividend accumulations under this Option will be payable to the Insured on demand on any anniversary of the Register date of this policy.

If the Insured does not elect one of the foregoing Options within three months after the mailing by the Society of a notice requiring such election, the Dividend shall be applied as provided under Option 2. If the Insured dies after the first policy year and while this policy is in force, such cash dividend as may be apportioned by the Society for the fraction of the then current policy year elapsed before such death will be allowed.

Any Additional Insurance and any Dividends or accumulations remaining unpaid at the maturity of this policy shall be payable at the same time and in the same manner as the face hereof unless otherwise provided herein.

PAYMENT AS MATURED ENDOWMENT. Whenever during the lifetime of the Insured the reserve on this policy and on any dividend additions together with any dividend accumulations equals the face amount hereof, the Society, upon surrender of this policy with due release, will regard this policy as a matured Endowment and will pay to the Insured the face amount of Insurance hereunder less any indebtedness.

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3/2 0

THIRD PAGE

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 6

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FOURTH PAGE.

ASSIGNMENTS. No assignment of this policy shall be binding upon the Society or be deemed to be in force unless in writing and until filed at its Home Office. The Society assumes no responsibility for the validity of any assignment.

BENEFICIARY. If there is no written assignment of this policy in force and on file with the Society or if the only assignment in force and on file is to the Society as security for an advance, the Insured may from time to time, by written notice duly filed at the Society's Home Office, change the beneficiary, but such change shall take effect only upon its endorsement on this policy by the Society.

If the executors or administrators of the Insured be not expressly designated as beneficiary, any part of the proceeds of this policy with respect to which there is no designated beneficiary living at the death of the Insured and no assignee entitled thereto, will be payable in a single sum to the children of the Insured who survive the Insured, in equal shares, or should none survive, then to the Insured's executors or administrators.

The Insured (or assignee if any) may, without the consent of the beneficiary, surrender, assign or pledge this policy and all rights hereunder or, subject to the Society's approval, change to another form or plan of insurance. An assignment by the Insured shall operate to exclude any and all rights of any beneficiary under this policy except that upon release of all outstanding assignments or upon reassignment to the Insured all rights under this policy shall be the same as if such assignments of said policy had not been made and that if assigned or pledged as collateral only by the Insured any equity remaining at the death of the Insured shall accrue to the beneficiary.

POLICY YEARS. The first policy year under this policy shall begin on the Register date stated on the back of this policy and the second and subsequent policy years shall begin on the respective anniversaries of the Register date.

AGE. If the age of the Insured has been misstated, any benefits accruing under this policy shall be adjusted to correspond to those which would accrue under a similar policy which the premium paid would have purchased at the Society's rates in use at the Register date hereof for the Insured's correct age. The Society will, however, admit the age of the Insured if furnished with due proof thereof, and in that event will issue to the Insured without cost a certificate evidencing such admission.

THIS CONTRACT. This policy, and the application therefor, a copy of which is endorsed hereon or securely attached hereto, constitute the entire contract between the parties. All statements made by the Insured in the absence of fraud, be deemed representations and not warranties, and no statement shall void this policy or be used in defense of a claim hereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued.

SELF-DESTRUCTION. Self-destruction same or insane, within two years from the date of issue hereof, is a risk not assumed by the Society under this policy. In such an event the Society's liability shall be limited to an amount equal to the premium actually paid.

Exhibit G Annexed to Stipulation

Policy No. 9,687,735, of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 7

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PROVISIONS RELATING TO LOANS AND SURRENDER VALUES.

LOANS. The Society, at any time while this policy is in force, will advance to the Insured, on proper assignment of this policy and on the sole security hereof, at 6% interest per annum payable annually on the anniversary of the Register date a sum which, with interest for the then current policy year, shall not exceed the cash value as stated in the following table. Interest if not paid when due shall be added to the existing loan and bear interest at the same rate. If the advance is for a purpose other than to pay premiums on policies in the Society, the granting of the same may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor. Failure to repay such advance or to pay interest thereon shall not avoid this policy unless the total indebtedness hereon shall equal the total loan value, nor until thirty-one days after notice shall have been mailed to the Insured, and to the assignee of record, if any, at their addresses last known to the Society.

Such advance may be repaid at any time while this policy is in force.

CASH SURRENDER VALUE. This policy, after being in force for one year, may be surrendered by the Insured for its cash value, as shown in the opposite table.

The payment of any cash value under this policy may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor.

RATES OF COMPUTATION. The Reserve for which funds are to be held upon this policy shall be computed upon the American Experience Table of Mortality with interest at 3%.

The values stated in the opposite table are equal to the full Reserve at the end of the then current policy year, less a surrender charge of not more than 2% of the face of this policy until the completion of the tenth policy year, at which time and thereafter there is no deduction made as a surrender charge, except that fractions of a dollar are not allowed.

TABLE OF LOAN AND CASH SURRENDER VALUES
FOR EACH \$1000 OF FACE AMOUNT.

After policy has been in force YEARS	CASH VALUE	After policy has been in force YEARS	CASH VALUE
1	\$ 776	14	\$ 909
2	\$ 788	15	\$ 917
3	\$ 800	16	\$ 924
4	\$ 812	17	\$ 932
5	\$ 824	18	\$ 938
6	\$ 832	19	\$ 945
7	\$ 844	20	\$ 951
8	\$ 855	21	\$
9	\$ 865	22	\$
10	\$ 877	23	\$
11	\$ 885	24	\$
12	\$ 893	25	\$
13	\$ 901	30	\$

The loan value is the cash value less interest to the end of the policy year.

These values will be increased by the cash value of dividend additions, if any; they will be reduced if there is any indebtedness.

Loan and surrender values for any years not shown in this table will be on the same basis and will be furnished on request.

Whole

Life

S.P.

AGE

71

J.H.

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 8

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MODES OF SETTLEMENT AT MATURITY OF POLICY.

The Insured may elect to have the net sum due under this policy upon its maturity applied under one or more of the following optional modes of settlement in lieu of the lump sum provided for on the first page hereof, and in the absence of such an election by the Insured, the beneficiary, after the Insured's death, may so elect. The beneficiary, after the Insured's death, may designate (with the right to change such designation) the person to whom any amount remaining unpaid at the death of the beneficiary shall be paid if there be no such person designated by the Insured and surviving. Such election, designation or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. **DEPOSIT OPTION:**
Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.
2. **INSTALLMENT OPTION:**
Paid in a fixed number of equal fiscal, semi-annual, quarterly or monthly installments as set forth in the following table.
3. **LIFE INCOME OPTION:**
Paid in equal annual, semi-annual, quarterly or monthly installments for five, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the beneficiary as above in the following table.
4. **INSTALLMENT OPTION:**
FIXED AMOUNT.
Paid in equal annual, semi-annual, quarterly or monthly installments of such amount as may be agreed upon until the net sum due under the policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the installments payable in such year, then the total amount of the installments for the subsequent year shall be increased by the amount of such excess.

EXCESS INTEREST DIVIDEND: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of installment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

TABLE OF INSTALLMENTS FOR EACH \$1,000-OF PROCEEDS.

The semi-annual and quarterly installments are 50.37% and 25.28% respectively of the annual installment under Option 2, and not less than these respective percentages under Option 3.

Age of Insured at Maturity	Option 2	OPTION 3—LIFE INCOME											
		5 Years Certain			10 Years Certain			15 Years Certain			20 Years Certain		
Year of Payment	Monthly Installment	Annual Installment	Age of Insured at Maturity	Monthly Installment	Annual Installment	Age of Insured at Maturity	Monthly Installment	Annual Installment	Age of Insured at Maturity	Monthly Installment	Annual Installment	Age of Insured at Maturity	Monthly Installment
1	843.86	10,126.32	10	843.86	10,126.32	10	843.86	10,126.32	10	843.86	10,126.32	10	843.86
2	266.99	3,203.97	11	843.86	10,126.32	11	843.86	10,126.32	11	843.86	10,126.32	11	843.86
3	222.36	2,668.38	12	843.86	10,126.32	12	843.86	10,126.32	12	843.86	10,126.32	12	843.86
4	177.01	2,119.13	13	843.86	10,126.32	13	843.86	10,126.32	13	843.86	10,126.32	13	843.86
5	137.15	1,645.80	14	843.86	10,126.32	14	843.86	10,126.32	14	843.86	10,126.32	14	843.86
6	103.14	1,237.68	15	843.86	10,126.32	15	843.86	10,126.32	15	843.86	10,126.32	15	843.86
7	78.16	937.92	16	843.86	10,126.32	16	843.86	10,126.32	16	843.86	10,126.32	16	843.86
8	58.16	697.92	17	843.86	10,126.32	17	843.86	10,126.32	17	843.86	10,126.32	17	843.86
9	43.16	517.92	18	843.86	10,126.32	18	843.86	10,126.32	18	843.86	10,126.32	18	843.86
10	33.16	397.92	19	843.86	10,126.32	19	843.86	10,126.32	19	843.86	10,126.32	19	843.86
11	23.16	277.92	20	843.86	10,126.32	20	843.86	10,126.32	20	843.86	10,126.32	20	843.86
12	13.16	157.92	21	843.86	10,126.32	21	843.86	10,126.32	21	843.86	10,126.32	21	843.86
13	3.16	37.92	22	843.86	10,126.32	22	843.86	10,126.32	22	843.86	10,126.32	22	843.86
14	7.71	92.57	23	843.86	10,126.32	23	843.86	10,126.32	23	843.86	10,126.32	23	843.86
15	7.26	86.94	24	843.86	10,126.32	24	843.86	10,126.32	24	843.86	10,126.32	24	843.86
16	6.83	81.31	25	843.86	10,126.32	25	843.86	10,126.32	25	843.86	10,126.32	25	843.86
17	6.23	73.74	26	843.86	10,126.32	26	843.86	10,126.32	26	843.86	10,126.32	26	843.86
18	5.73	67.59	27	843.86	10,126.32	27	843.86	10,126.32	27	843.86	10,126.32	27	843.86
19	5.23	61.44	28	843.86	10,126.32	28	843.86	10,126.32	28	843.86	10,126.32	28	843.86
20	4.73	55.29	29	843.86	10,126.32	29	843.86	10,126.32	29	843.86	10,126.32	29	843.86
21	4.23	49.14	30	843.86	10,126.32	30	843.86	10,126.32	30	843.86	10,126.32	30	843.86
22	3.73	42.99	31	843.86	10,126.32	31	843.86	10,126.32	31	843.86	10,126.32	31	843.86
23	3.23	36.84	32	843.86	10,126.32	32	843.86	10,126.32	32	843.86	10,126.32	32	843.86
24	2.73	30.69	33	843.86	10,126.32	33	843.86	10,126.32	33	843.86	10,126.32	33	843.86
25	2.23	24.54	34	843.86	10,126.32	34	843.86	10,126.32	34	843.86	10,126.32	34	843.86
26	1.73	18.39	35	843.86	10,126.32	35	843.86	10,126.32	35	843.86	10,126.32	35	843.86
27	1.23	12.24	36	843.86	10,126.32	36	843.86	10,126.32	36	843.86	10,126.32	36	843.86
28	0.73	6.09	37	843.86	10,126.32	37	843.86	10,126.32	37	843.86	10,126.32	37	843.86
29	0.23	0.00	38	843.86	10,126.32	38	843.86	10,126.32	38	843.86	10,126.32	38	843.86
30	0.00	0.00	39	843.86	10,126.32	39	843.86	10,126.32	39	843.86	10,126.32	39	843.86

If the fractional year's installments under Options 2, 3 or 4 or interest payments under Option 1 together with similar payments from any other policy or policies of this Society on the life of the insured and payable to the same beneficiary on the same date would amount to less than Ten dollars each, the Society reserves the right to pay annually, or in such manner that the fractional payments shall amount to at least Ten dollars each.

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office.

Under Options 2, 3 and 4, the first installment will be due upon receipt of due proof of death. If Option 3 be elected the Society

will require satisfactory evidence of the age of the person upon whose life the Life Income depends. After the expiration of the period certain, installments under Option 3 will continue during the lifetime of such person, terminating with the last installment due prior to the death of such person.

The Society will make each payment under the above Options by check which will require the personal endorsement of the payee as proof of survival. If any such payment depends upon the survival of any person other than the payee, satisfactory proof of due survival of such other person must be furnished to the Society at the time of such payment.

Options 1, 3 and 4 shall be available only if there is a personal beneficiary, i. e., other than a corporation, firm, trustee, etc.

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 9

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COPY OF APPLICATION.

NOTE.—This copy should be carefully examined and if any error or omission is found, full particulars, with the number of the policy, should be sent immediately to the Home Office of the Society, 393 Seventh Ave., New York City.

copy

APPLICATION, PART I 9,667,735

TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

I hereby apply for a policy on my life for \$ 200,000 for the benefit of

My executors or administrators.

(Insert (print) full name of beneficiary, relationship to applicant, and address if other than that of applicant, if living at my death; otherwise as stated in policy, with right to change the beneficiary or assign the policy reserved to me, payable as follows:

State Made of Settlement desired, if any.

My full name is FLORENCE GUGGENHEIM

(Insert (print) full name of person whose life is proposed for insurance.

I was born at Philadelphia, Pa.

Place.

on the 3rd of September 1883. My insurance age at nearest birthday is therefore 71 years.

Be sure to insert correct date of birth (day, month, year), and state correctly the age at nearest birthday.

The policy to be on the WHOLE LIFE - ONE PAYMENT plan, with Premiums of \$ 170,778.00

(Insert "Ord. Life," "Life - A P," "year End," "Convertible," or "year Term.")

payable immediately in advance, and with ACCIDENTAL DEATH BENEFIT

Place (X) mark after benefits selected.

(Insert "semi" or "quarter"—if necessary.)

My principal occupation is that of

My other occupations are

State nature of business in detail, firm name, and if employed, name and address of employer.

My residence is No. 120 Broadway, New York N.Y.

City or Town. County. State.

Place of business is No. 120 Broadway, New York N.Y.

City or Town. County. State.

I hereby agree that any policy issued hereon shall not take effect until the first premium thereunder has been paid during my good health; that no agent or other person except the President, a Vice-President, the Secretary, the Treasurer, a Registrar or an Assistant Registrar of the Society has power to make or modify any contract on behalf of the Society or to waive any of the Society's rights or requirements, and that no waiver shall be valid unless in writing and signed by one of the foregoing officers. All of the foregoing answers and all those contained in Part II hereof are true, and are offered to the Society as an inducement to issue the policy or policies for which application is hereby made.

Send any Premium Notices required by law

business

(1) State whether Residence or Business. If not stated, such notices will be sent to Residence.

State.

County.

City or Town.

State.

Applicant Enter Here Any Special Instructions

Dated at New York N.Y. Dec. 27th, 1934.

(SGD) FLORENCE GUGGENHEIM

SIGNATURE OF APPLICANT

Subscribing Agent only should sign here. (If two or more persons actually engaged in subscribing this application, each should sign his full name and designate his proper name interest herein if shares are not equal. A firm name must not be signed for this form.)

AGENCY or AGENCIES.

Exhibit G Annexed to Stipulation



Policy No. 9,687,735 of the Equitable Life Assurance
Society.

(Photostat Opposite)

Sheet 10

SEVENTH PAGE.

es on this page are to be made only by the Society at its Home Office in New York.
No other entries will be recognized.)

SEVENTH PAGE.

Tightly Bound

Exhibit G Annexed to Stipulation

Policy No. 9,687,735 of the Equitable Life Assurance

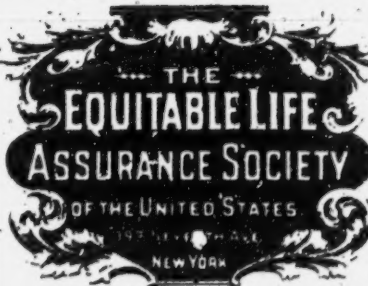
(Photostat Opposite)

Sheet 11

IT IS NOT NECESSARY TO EMPLOY ANY PERSON, FIRM, OR CORPORATION TO COLLECT THE INSURANCE OR SECURE ANY BENEFIT UNDER THIS POLICY.



WRITE DIRECT TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 393 SEVENTH AVENUE, NEW YORK, OR COMMUNICATE WITH THE NEAREST AUTHORIZED AGENT OF THE SOCIETY WHOSE DUTY IT IS TO FACILITATE ALL SETTLEMENTS WITHOUT CHARGE.



SINGLE PREMIUM LIFE POLICY.

No. 2,227,735

FLORENCE GUGGENHEIM

FACE AMOUNT \$ 200,000

AGE 71

SINGLE PREMIUM \$ 170,778.00

Register date:
December 27th, 1934.

Insurance payable at death.
Single Premium.
Annual Dividends:

FROSSER & HOMANS

SERIES AD 74

EXHIBIT "H" ANNEXED TO STIPULATION

Policy No. 4,918,867 of the Mutual Life Insurance Company

(Photostat Opposite)

Sheet 1

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For One Dollar

(2) In the acknowledgment where marked with a red star (*) fill in "NOTARY" or whatever may be the official designation.

DESIGN

... officer before whom the acknowledgment of...

(4) Both the Original and Duplicate Original Instruments must be sent to the Commission.

(5) The Original will be retained at the Home Office and the

ENT.

her valuable considerations (the re-

Harry J. Sargent - State Bank Building - Portland, Me.

The Mutual Life Insurance Company of New York

the consideration above expressed I do also for myself my executors and administrators, my heirs, assigns and assigns forever

IN WITNESS WHEREOF, I have hereunto set my

head and seal this

ACKNOWLEDGMENT BY AN INDIVIDUAL

From 1901

County of New York ss. I, John J. [Signature],
Deputy Clerk of the County of New York, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the County of New York.

Notary on "Instruments" 2 and 3 at top of Duplicate Original. (Notary sign here), *Joseph D. Johnson*

State of _____

in the year 19 _____ before me personally came

he is the _____ of _____, the corporation described _____ and which executed the foregoing assignment. That he is _____

[illegible]

1

Exhibit H Annexed to Stipulation

Policy No. 4,918,863 of the Mutual Life Insurance Company

(Photostat Opposite)

Sheet 2

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(This Policy issued February 1st, 1946)

WILL PAY

to the Insured's _____, the Beneficiary,
 executors, administrators or assigns

DEATH BENEFIT _____ TWO HUNDRED THOUSAND _____ Dollars,
the Amount of the Policy

upon receipt of due proof of the death

of _____, the Insured,
 Florence Cuggenhein

This Policy also provides for

GENERAL BENEFIT: _____
 Optional Modes of Settlement (Section 3), _____
 Annual Dividends (Section 2), _____
 Loan (Section 5), _____
 Cash Value (Section 4), _____

This Policy is issued in consideration of the application and of the payment of the single premium of

One hundred sixty-nine thousand, two hundred eight and 00/100 Dollars.

When the premium on this Policy is paid to the Company, it will be acknowledged either by a receipt signed by the Treasurer and countersigned by the Agency Cashier, or by endorsement on this Policy by the Company at its Home Office. Payment of this Policy is not otherwise evidence of the payment of such premium.

The accompanying pages 2 and 3 of this Policy are a part of this contract.

In Witness Whereof, the Company has caused this Policy to be executed this twenty-seventh

day of December 19 36.

[Signature]
 Secretary

[Signature]
 David F. Gordon, President

[Signature]
 Countersigned by _____
 Agent of Insurance at New York

NEW YORK
 OFFICE OF THE SECRETARY

Exhibit H Annexed to Stipulation

Policy No. 4,918,863 of the Mutual Life Insurance Company

(Photostat Opposite)

Sheet 3

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Section 1. Optional Modes of Settlement.

The proceeds of this Policy, upon an surrender, as the case may be, may, if so elected, be settled by one of the following optional modes of settlement instead of being paid in one sum:—

Option 1.—By the Company's holding the proceeds as a principal sum payable at the death of the policy, the Company immediately paying interest (with a final interest payment to the date of such death) at three per cent a year plus participation in bonus interest at such rate as the Company may determine for each year.

Option 2.—By payment of equal monthly installments for the number of years stated in accordance with the table on page 5. Installments will be increased by participation in bonus interest over three per cent a year at such rate as the Company may determine for each year.

Option 3.—By payment of equal monthly installments for five, ten, or twenty years, or until, as directed, and for the remaining lifetime of the policy, in accordance with the table on page 5. Installments for the period of years will be increased by participation in bonus interest over three per cent a year at such rate as the Company may determine for each year.

Option 4.—By payment of equal monthly installments of the amount specified in the election as long as the proceeds, together with interest thereon as provided for in Option 1, shall suffice, with a final payment of any balance less than one such installment.

Under Option 1 the first interest payment will be due at the end of one month from the date when the proceeds become payable. Under Options 2, 3, 4, and 5 the first installment will be due when the proceeds become payable.

Note.—If requested in the election, payment of bonus under Option 1 or of installment under Option 2, 3, 4, or 5 will be made quarterly, semi-annually, or annually instead of monthly. The first payment of bonus under Option 1 will be due at the end of three months from the date when the proceeds become payable. Payments are payable, and interest is payable, on the installment under Option 2, 3, 4, or 5 from the date when the proceeds become payable.

Method of Election.—An optional Mode of Settlement can be elected, or a previous election rescinded or changed, only by written notice to the Company at its Home Office as signified by the Policy for endorsement.

Note.—When a policy becomes entitled to a single sum, it may, at the option of the policy, be paid in one sum, or in three parts.

General Provisions.—Joint or contingent payees may be named under the above options within such limitations as may be prescribed by the Company, except that under Option 3 there cannot be joint payees and the installments to contingent payees will not be payable beyond the period certain.

These optional Modes of Settlement are not available if a surrender, assignment, partnership, or estate is the payee, nor if the guaranteed interest payments or installments will, irrespective of dividends or installments, be less than \$10 each.

If any of the above options has been elected, a supplementary contract bearing the date on which the proceeds of the Policy become payable and providing for the settlement desired will be issued.

Surrender or Transfer of Supplementary Contract.—Unless otherwise specified in the election, within the supplementary contract or any of the benefits accruing thereunder shall be transferable or subject to surrender, constitution, or assignment, except that at the death of the last surviving payee the then surrender value as defined below shall be payable to the executor or administrators of such payee.

The surrender value of the supplementary contract shall be as follows:

Option 1.—The principal sum with any accrued interest.

Options 2 and 3.—The accumulated value, computed at three per cent interest compounded annually, of future installments certain. Under Option 3 no such surrender may be made during the lifetime of the original payee.

Option 4.—Such part of the proceeds of the Policy and interest thereon as shall not have been paid in installments.

Section 2. Annual Dividends.

The share of the dividends surplus accruing on this Policy shall be allotted as a dividend annually on each anniversary of its date.

Each such dividend may be either:—

1. Used to purchase a paid-up participating addition to the sum insured, having equal dividend rights, which will be automatically added on the date of adjustment and will continue to share with and add to the other options as duly elected; or

2. Paid in cash; or

3. Deposited with the Company at interest within sixty days from date of dividend (unless dividend deposit). Interest will be credited at such rate as may be determined by the Company, but never less than three per

cent a year, and will be added to existing dividend deposits annually. Dividend deposits will, at the death of the insured, be then payable in the full.

At any time any dividend additions may be surrendered for the full reserve (thereon or any accumulated dividend deposits may be withdrawn).

Post Mortem Dividend.—Upon the death of the insured a cash dividend will be credited to this Policy for the fraction of the policy year elapsed before such death.

Section 3. Loans.

At any time while this Policy is in force, the Company will, upon receipt of the Policy and a loan agreement satisfactory to the Company and on the sole security of this Policy, loan an amount which with interest shall be repaid within the limit of the cash value of this Policy on the date of the loan.

Any existing indebtedness to the Company on this Policy shall be paid out of such loan.

Interest on the loan shall be at the rate of six per cent a year payable on the date of the loan provided for in the loan agreement and on each anniversary of the date of the Policy thereafter. If this interest is not paid when due it shall be added to the existing loan and bear interest at the same rate. Failure to repay the loan or pay interest shall not void the Policy unless the total indebtedness, including accrued interest, shall equal or exceed the cash value of the Policy, in which case the Policy shall stand void thirty-one days after notice shall have been mailed to the insured and any assignee.

The loan, with accrued interest, or any part thereof not less than \$10, may be repaid at any time prior to the date of maturity.

Section 4. Cash Values.

At any time after this Policy shall have been one year in force, this Policy may be surrendered for its net cash value. Such net cash value shall be the cash value as defined below less any indebtedness to the Company thereon.

The cash value at any time shall be the reserve at such time for the full amount of this Policy and for any dividend additions hereto increased by any accumulated dividend deposits and less a surrender charge of not more than two per cent of the face amount of this Policy.

After the Policy has been ten years in force there shall be no surrender charge.

Section 5. Table of Cash and Loan Values.

These values are computed in accordance with the provisions of Sections 3 and 4 and are on the assumption that there are no dividends or installments.

Any dividend additions or dividend deposits will increase such values and any indebtedness to the Company on this Policy will decrease such values as provided in the above mentioned sections.

Values for intermediate periods will be calculated as provided in Sections 3 and 4.

FOR EACH \$100 FACE AMOUNT		FOR EACH \$100 FACE AMOUNT	
At End of Policy Year	Cash Value	At End of Policy Year	Cash Value
1	\$776.67	14	\$909.51
2	783.74	15	917.32
3	800.69	16	924.84
4	812.43	17	932.02
5	824.01	18	938.75
6	832.97	19	945.23
7	844.33	20	951.54
8	855.49	21	957.69
9	866.56	22	962.31
10	877.42	23	966.83
11	887.60	24	970.37
12	893.63	25	973.33
13	901.59	26	975.75

NOTE.—The loan value, based on the above table for the end of a policy year, will be less interest, and will be subject to the provisions of Section 3.

Section 6. Reserve.

The reserve held for the face amount of this Policy and for any dividend additions, and the reserve mentioned in this Policy shall be computed in accordance with the American Experience Table of Mortality assuming interest at the rate of three per cent a year.

Exhibit H Annexed to Stipulation

Policy No. 4,918,863 of the Mutual Life Insurance Company

(Photostat Opposite)

Sheet 4

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Wages of the bonded.—Except as may otherwise be specifically provided in this Policy or by endorsement on this Policy, the insured may during his lifetime, without the consent, and to the exclusion of the beneficiary, receive, exercise, and enjoy every benefit, option, right, and privilege conferred by this Policy or allowed by the Company.

Policy Statement—All sums payable by the Company under this Policy shall be payable at the option of the Company in the City of New York.

In any settlement of this policy at its maturity as a death claim or surrender, any indebtedness to the Company on this Policy shall be deducted and surrender of the Policy to the Company will be required.

The Contract.—This Policy and the application, copy of which is attached, constitute the entire contract.

All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid or be used in defense to a claim under this Policy unless contained in the written application and a copy of the application is attached to the Policy when issued.

Assignment.—The Company shall not be charged with notice of any assignment of any interest in this contract until the original assignment or a certified copy thereof has been filed with the Company at its Home Office.

The Company assumes no responsibility as to the validity or effect of any assignment.

All assignments shall be subject to any indebtedness to the Company on account of or secured by this Policy.

Notes.—No agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits or accepting any representations or information not contained in the written application for this Policy, or to make or modify this contract, or to extend the time for payment of the premium, or to waive any forfeiting or any of the Company's rights or requirements.

Monthly and Annual Payments for Year 81,000 of Proceeds of Policy under Optional Modes of Settlement 2 and 3

OPTION 3			OPTION 2		
Year	Grade	Score	Year	Grade	Score
10	Grade 10	85.00	10	Grade 10	85.00
9	Grade 9	84.00	9	Grade 9	84.00
8	Grade 8	83.00	8	Grade 8	83.00
7	Grade 7	82.00	7	Grade 7	82.00
6	Grade 6	81.00	6	Grade 6	81.00
5	Grade 5	80.00	5	Grade 5	80.00
4	Grade 4	79.00	4	Grade 4	79.00
3	Grade 3	78.00	3	Grade 3	78.00
2	Grade 2	77.00	2	Grade 2	77.00
1	Grade 1	76.00	1	Grade 1	76.00

31st

December

December 27, 1934

Exhibit H Annexed to Stipulation

Policy No. 4,918,863 of the Mutual Life Insurance Company.

(Photostat Opposite)

Sheet 5

Exhibit H Annexed to Stipulation

Policy No. 4,918,863 of the Mutual Life Insurance Company

(Photostat Opposite)

Sheet 6

H. Y. Myrick

No. 4,918,863

**The Mutual Life Insurance
Company of New York**

**ANNUAL DIVIDEND
SINGLE PREMIUM LIFE POLICY**

On the Life of

DRAW CHECK TO PAY THIS PREMIUM
TO THE ORDER OF THE MUTUAL LIFE
INSURANCE COMPANY OF NEW YORK

Florence Guggenheim

Amount, \$ 200000.

Date, December 27th 1934

Single Premium, \$ 169208.00

13-11-34

Tightly Bound

EXHIBIT "I" ANNEXED TO STIPULATION

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 1

Assignment of Policy No. 1226201

ON THE LIFE OF

Florence Guggenheim

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

For Value Received I hereby assign, transfer and set over the above described policy of insurance, together with all rights reserved to me as the insured under the said policy, or as the owner thereof, or as the beneficiary hereunder, or as the assignee thereof, and all sum or sums of money, interest, benefit and advantage whatsoever, now due or hereafter to become due to me by virtue thereof, unto

Harry J Guggenheim

No. St Washington Street
City Massachusetts State Massachusetts

It is hereby certified that the undersigned has not been declared a bankrupt and that no proceedings to declare the undersigned a bankrupt are now pending and that there has been no assignment of the said policy.

Witness my hand and seal
New York in the state of New York

this 21 day of December 1924

Harry J Guggenheim Florence Guggenheim (S.)
Witness

Witness

(Sign in Ink)

(L. S.)

An Assignment of a Policy should be executed in duplicate, and the duplicate sent to the Home Office of the Company for record.

This form of Assignment is furnished by the Company. As the laws of the various states differ, it is urged that an Assignment be filled out and signed under the direction of some competent attorney who is familiar with the laws of the state in which it is to be executed.

The Company does not guarantee the validity of any Assignment.

ATTACH THIS ASSIGNMENT TO THE POLICY.

Tightly Bound

Exhibit I. Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 2

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THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

HEREBY INSURES THE LIFE OF

1. Insured

Flora Mae Ouggenheim in

2. Amount

the amount of THIRTY FIVE THOUSAND Dollars,

3. Death
Claim

payable on receipt of due proof of death of said insured during the continu-

ance of this policy, less any indebtedness and advances hereon, at its Home

4. Beneficiary

Office in Cincinnati, Ohio, to the beneficiary hereinafter named.

5. Premium

This policy is issued in consideration of a premium

of twenty one thousand one hundred thirty eight Dollars,
& 50/100

6. Conditions

All conditions, benefits and provisions stated on the subsequent pages are
hereby made a part of this policy.

7. Date

With respect to policy values and participation in profits, this policy shall be

deemed to be dated the 31st day of December 19 34.

Issued at Cincinnati, Ohio, this 7th day of January 19 35.

Richard S. Post
Secretary

W. Howard Cox
President

Paul H. [Signature]
Register

6. 4521 A 8-1 (c)
8-10 4-3 (3)

Single Premium Life
Annual Dividends

1/2

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 3

Section A.

Beneficiary and Ownership Provisions.

A1. CHANGE OF BENEFICIARY. The insured shall have the right at any time, and from time to time, to change the beneficiary, by written notice in form acceptable to the Company, which will be furnished on request.

A2. OWNERSHIP. The insured may exercise every right and receive every benefit reserved to the insured or the owner of the policy, including the right of assignment, and may agree with the Company to any change in or amendment of the policy, without the consent of any beneficiary except as may be otherwise provided in appointing such beneficiary.

A3. BENEFICIARY. The net sum payable at the death of the insured shall be paid to the executors, administrators or assigns of the insured.

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 4

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Section B—Premiums and Dividends.

B1. PAYMENT OF PREMIUM. The premium shall be payable in advance, either at the Home Office, or to an authorized agent of the Company on delivery of a receipt signed by the President or Secretary and countersigned by each agent.

B2. DIVIDENDS. This policy shall participate in profits as apportioned by the Company. Beginning at the end of the first policy year dividends shall be declared annually during its continuance.

B3. DIVIDENDS CUMULATIVE. The dividend for any year may be withdrawn in cash; or left to accumulate with interest compounded annually at three per cent, increased

from profits as apportioned by the Company, until the maturity of the policy, subject to withdrawal at any time; or applied to the purchase of paid-up, non-participating additions to the policy, convertible into cash at any time for the reserve of the additions.

B4. APPLICABLE DISCOUNT. If the owner of this policy shall not exercise any other cash option the dividend shall be applied, on the expiration of thirty-one days after the anniversary of the policy, to the purchase of paid-up additions. At the death of the insured during the continuance of the policy, the pro rata part of the dividend for the current policy year and accumulations of dividends at interest shall be paid with the policy.

Section C—Policy Values.

C1. RESERVE BASIS. The reserve of this policy is computed on the American Imparities Table of Mortality with interest at 3 1/4%.

C2. SURRENDER VALUE. The surrender value for each thousand dollars of insurance is equal to the reserve at the end of the policy year, adding costs, less surrender charges in the first to the sixth policy years inclusive, of \$20, \$25, \$34, \$45, \$54, \$64 and \$75 respectively.

C3. POLICY VALUE. The surrender value, less any indebtedness or advances on the policy, may be used at the option of the owner of the policy in either of the following ways as set forth in the table below.

C4. OPTION 1—LOAN. Borrowed or taken in advance in whole or in part on the sole security of the policy, on assignment thereof, less any indebtedness and previous advances on this policy, at six per cent interest payable

annually on the anniversary of the policy, interest to be deducted and paid in advance (Table 1).

Failure to repay any such advance or to pay interest shall void this policy whenever but not until the total indebtedness and advances herein with interest shall equal or exceed the then loan value and not until one month after arrears shall have been made by the Company to the last known address of the insured, and of the assignee, if any.

The loan value will be increased by the value of any paid-up additions.

Commencement of loans other than to pay premiums on policies in this Company may be deferred by the Company sixty days from the date of application therefor.

C5. OPTION 2—CASH. Withdrawals in cash on legal surrender of the policy (Table 2). The cash value will be increased by the value of any paid-up additions. Payment may be deferred by the Company sixty days from the date of application therefor.

Table of Values.

The values in these tables are on the basis of \$1,000 of insurance. If this policy is for hundreds of more or less than \$1,000, the values are increased or reduced proportionately.

1. Loan, less interest to the next anniversary, available at any time during the policy year; or
2. Cash, available at the end of the policy year.

1st year	2nd year	3rd year	4th year	5th year	6th year	7th year
\$ 759	\$ 758	\$ 773	\$ 788	\$ 800	\$ 812	\$ 824
8th year	9th year	10th year	11th year	12th year	13th year	14th year
\$ 836	\$ 847	\$ 859	\$ 868	\$ 877	\$ 886	\$ 895
15th year	16th year	17th year	18th year	19th year	20th year	
\$ 904	\$ 913	\$ 921	\$ 929	\$ 936	\$ 943	

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 5

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Section D — Settlement Options.

D.1. SETTLEMENT OPTIONS. The owner of this policy, or the payee after the insured's death, may elect, by written notice to the Company at its Home Office, in form acceptable to the Company, which will be furnished on request, to have the net sum payable under this policy paid in any one of the following ways in lieu of a single sum.

D.2. OPTION 1—CERTAIN INSTALLMENTS. In equal annual installments for any specified number of years (not exceeding twenty-five), the first installment being payable immediately, in accordance with the following table for each one thousand dollars of paid net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as apportioned by the Company.

Number of Installments	Minimum Amount of Each Installment	Number of Installments	Minimum Amount of Each Installment
2	\$997.20	14	\$68.50
3	844.25	15	61.25
4	711.19	16	55.75
5	611.59	17	51.74
6	537.52	18	48.52
7	480.88	19	45.78
8	435.21	20	43.36
9	397.49	21	41.24
10	365.23	22	39.38
11	337.25	23	37.74
12	312.54	24	36.29
13	290.25	25	35.00

D.3. OPTION 2—CONTINUOUS INSTALLMENTS. In equal annual installments, the first installment being payable immediately, for a period of five (5), ten (10) or twenty (20) years certain, and for as long thereafter as the payee shall survive, in accordance with the following table for each one thousand dollars of paid net sum. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount. Installments, after the first, will be increased from profits as apportioned by the Company, but not beyond the period of certain installments. The Company may require due proof that the payee is living before the payment of each or any installment hereunder is made.

Percent Age of Payee When Policy Begins to Pay	Minimum Amount of Each Installment	Percent Age of Payee When Policy Begins to Pay	Minimum Amount of Each Installment
10	\$44.10	40	\$41.74
11	44.77	41	41.84
12	45.45	42	41.96
13	46.13	43	42.08
14	46.81	44	42.20
15	47.49	45	42.32
16	48.17	46	42.44
17	48.85	47	42.56
18	49.53	48	42.68
19	50.21	49	42.80
20	50.89	50	42.92
21	51.57	51	43.04
22	52.25	52	43.16
23	52.93	53	43.28
24	53.61	54	43.40
25	54.29	55	43.52
26	54.97	56	43.64
27	55.65	57	43.76
28	56.33	58	43.88
29	57.01	59	44.00
30	57.69	60	44.12
31	58.37	61	44.24
32	59.05	62	44.36
33	59.73	63	44.48
34	60.41	64	44.60
35	61.09	65	44.72
36	61.77	66	44.84
37	62.45	67	44.96
38	63.13	68	45.08
39	63.81	69	45.20
40	64.49	70	45.32
41	65.17	71	45.44
42	65.85	72	45.56
43	66.53	73	45.68
44	67.21	74	45.80
45	67.89	75	45.92
46	68.57	76	46.04
47	69.25	77	46.16
48	69.93	78	46.28
49	70.61	79	46.40
50	71.29	80	46.52
51	71.97	81	46.64
52	72.65	82	46.76
53	73.33	83	46.88
54	74.01	84	47.00
55	74.69	85	47.12
56	75.37	86	47.24
57	76.05	87	47.36
58	76.73	88	47.48
59	77.41	89	47.60
60	78.09	90	47.72
61	78.77	91	47.84
62	79.45	92	47.96
63	80.13	93	48.08
64	80.81	94	48.20
65	81.49	95	48.32
66	82.17	96	48.44
67	82.85	97	48.56
68	83.53	98	48.68
69	84.21	99	48.80
70	84.89	100	48.92
71	85.57		
72	86.25		
73	86.93		
74	87.61		
75	88.29		
76	88.97		
77	89.65		
78	90.33		
79	91.01		
80	91.69		
81	92.37		
82	93.05		
83	93.73		
84	94.41		
85	95.09		
86	95.77		
87	96.45		
88	97.13		
89	97.81		
90	98.49		
91	99.17		
92	99.85		
93	100.53		
94	101.21		
95	101.89		
96	102.57		
97	103.25		
98	103.93		
99	104.61		
100	105.29		

*Age 5 and under.
AB 4-3 (c)
2001

Percent Age of Payee When Policy Begins to Pay	Minimum Amount of Each Installment	Percent Age of Payee When Policy Begins to Pay	Minimum Amount of Each Installment
10	\$44.10	40	\$41.74
11	44.77	41	41.84
12	45.45	42	41.96
13	46.13	43	42.08
14	46.81	44	42.20
15	47.49	45	42.32
16	48.17	46	42.44
17	48.85	47	42.56
18	49.53	48	42.68
19	50.21	49	42.80
20	50.89	50	42.92
21	51.57	51	43.04
22	52.25	52	43.16
23	52.93	53	43.28
24	53.61	54	43.40
25	54.29	55	43.52
26	54.97	56	43.64
27	55.65	57	43.76
28	56.33	58	43.88
29	57.01	59	44.00
30	57.69	60	44.12
31	58.37	61	44.24
32	59.05	62	44.36
33	59.73	63	44.48
34	60.41	64	44.60
35	61.09	65	44.72
36	61.77	66	44.84
37	62.45	67	44.96
38	63.13	68	45.08
39	63.81	69	45.20
40	64.49	70	45.32
41	65.17	71	45.44
42	65.85	72	45.56
43	66.53	73	45.68
44	67.21	74	45.80
45	67.89	75	45.92
46	68.57	76	46.04
47	69.25	77	46.16
48	69.93	78	46.28
49	70.61	79	46.40
50	71.29	80	46.52
51	71.97	81	46.64
52	72.65	82	46.76
53	73.33	83	46.88
54	74.01	84	47.00
55	74.69	85	47.12
56	75.37	86	47.24
57	76.05	87	47.36
58	76.73	88	47.48
59	77.41	89	47.60
60	78.09	90	47.72
61	78.77	91	47.84
62	79.45	92	47.96
63	80.13	93	48.08
64	80.81	94	48.20
65	81.49	95	48.32
66	82.17	96	48.44
67	82.85	97	48.56
68	83.53	98	48.68
69	84.21	99	48.80
70	84.89	100	48.92
71	85.57		
72	86.25		
73	86.93		
74	87.61		
75	88.29		
76	88.97		
77	89.65		
78	90.33		
79	91.01		
80	91.69		
81	92.37		
82	93.05		
83	93.73		
84	94.41		
85	95.09		
86	95.77		
87	96.45		
88	97.13		
89	97.81		
90	98.49		
91	99.17		
92	99.85		
93	100.53		
94	101.21		
95	101.89		
96	102.57		
97	103.25		
98	103.93		
99	104.61		
100	105.29		

D.4. OPTION 3—RETIRED AT DEATH. Retained by the Company at three per cent interest payable annually during the lifetime of the payee. The principal sum and accrued interest may be withdrawn at any time, on sixty days' notice, unless otherwise specified in electing such option. If desired, interest will be paid in semi-annual, quarterly or monthly parts of equivalent value, beginning six months, three months or one month, respectively, after the death of the insured. Interest payments will be increased from profits as apportioned by the Company.

D.5. OPTION 4—PRIZE INCOME. In equal annual installments, the first installment payable immediately, each of such amount as may be elected, continuing until the said net sum and interest are exhausted, provided that the final installment shall include any balance of less than one installment. On each anniversary of the first installment, interest on the unpaid balance will be added thereto at three per cent per annum, increased from profits as apportioned by the Company. If desired, installments will be paid in semi-annual, quarterly or monthly parts of the same aggregate annual amount.

D.6. MINIMUM INSTALLMENTS. If the payment of installments is requested in semi-annual, quarterly or monthly parts of the annual installments provided for by the terms of any of the above options and such semi-annual, quarterly or monthly payments would necessitate payments of less than Ten Dollars (\$10.00), the Company reserves the right to make payments at less frequent intervals, and if under any option elected the annual installments would amount to less than Ten Dollars (\$10.00), the Company reserves the right to pay the amount due in a single sum to the payee then entitled to receive installments under the terms of the election.

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 6

Section E — General Privileges and Conditions.

E 1. CONTRACT. This policy, together with the application, a copy of which is attached hereto, shall constitute and contain the entire contract. All statements shall, in the absence of fraud, be deemed representations and not warranties. No such statement shall avoid this policy or be used in defense to a claim thereunder, unless it is contained in the written application, and unless a copy of such application is attached to the policy when issued.

E 2. INCONTINGENTABILITY. This policy shall be incontestable after two years from the date of issue except for non-payment of premium, and except as to provisions, if any, relating to benefits in the event of disability or granting additional insurance in event of death by accidental means.

E 3. AGE. In the event of the age of the insured being misstated, the amount payable shall be such as the premiums paid would have purchased at the correct age.

E 4. SUICIDE. Benefits within two years from the date of issue of this policy, whether the insured was sane or insane, is a risk not assumed hereunder and the amount payable shall be a sum equal to the premium paid in cash hereto.

E 5. AUTHORITY. None of the terms of this policy shall be modified, nor any forfeiture under it waived, save by an agreement in writing, signed by the President, a Vice-President, the Secretary or an Assistant Secretary, whose authority for this purpose shall not be delegated.

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 7

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Application for Insurance to THE UNION CENTRAL LIFE INSURANCE COMPANY, of Cincinnati, Ohio, -- Part 1.

1. a Full name of applicant FLORENCE GUGGENHEIM FORM No. 431 A

b Residence { No. 1000 Street Port Washington City of Port Washington County of Richmond
or R. F. D. No. 1000 in Port Washington direction from Port Washington

c How long have you lived there? 18 years
State of Port Washington P. O. Address for notices 1225 1st St. Port Washington

f Names and addresses of all firms or persons by which you are employed

2. Give place and date of birth. Town Philadelphia County Philadelphia State Penn.

Mo. Sept Day 3 Year 1863 Age nearest birthday 71

3. a Amount of insurance, \$ 200.000 b Plan Whole Life c Disability: When ☐ Disabled ☐ Double ☐ Indemnity ☐ Plan (a) with other Comp. Plan.

d Premiums Regular Single 119.08 e Annuity ☐ Quarterly ☐ Monthly ☐ Policy to be endorsed in usual manner ☐ Indemnity if other method is desired

4. a Primary Beneficiary Catalago b Relationship to applicant Daughter c Birthday of Beneficiary: Yr. Mo. Day Age (First name as it is to appear in the policy.) (Date over)

d Contingent Beneficiary Catalago e Relationship to applicant Daughter f Birthday of Beneficiary: Yr. Mo. Day Age (First name as it is to appear in the policy.) (Date over)

5. a How many serial rights (including glider) have you made in the last 12 months? none In the last 24 months? none

b Do you expect to make serial (including glider) rights as passenger or otherwise? no

6. a Have you ever applied to this company for insurance? no b Name of Company Union Central Life Insurance Co. c Amount 1053900 d Date 1053900

7. a What insurance do you now carry in other companies? (If none, so state). none b Name of Company Union Central Life Insurance Co. c Amount 1053900 d Date 1053900

8. a Have you applied, or have you a present intention to apply, for other insurance in any other company? (If not, so state) no b Name of Company Union Central Life Insurance Co. c Amount 1053900 d Date 1053900

9. a Has first premium been paid? yes b If so, state the amount paid, as follows: 1053900 c I have settled the premium by payment of \$ 1053900 which I have received binding receipt form 431 A, to the terms of which I agree.

It is agreed that any insurance issued on this application shall not take effect until the policy has been delivered to the applicant and the first premium thereon has been paid and accepted by the Company or its authorized agent during the applicant's lifetime and good health: provided, however, that if the applicant pays the first premium in advance and so declares at Question 7 hereon and receives therefor binding receipt in the form attached hereto (which is the only form of receipt for payment of first premium in advance authorized by the Company) the terms of said binding receipt shall apply. I also agree that payment of the first premium shall keep the insurance in force only to the date fixed in the policy for payment of the next premium.

I agree to be examined by the Company's Medical Examiner, and that my statements in this application and to the Medical Examiner are made for the purpose of obtaining this insurance. I understand that any note accepted by the Company in connection with the first year's premium must be secured to its satisfaction.

Signature of Applicant Florence Guggenheim Date Jan 4th 1934 at Port Washington

Signature of Agent James B. Knight Date Jan 4th 1934 at Port Washington

THE CHAS. B. KNIGHT AGENCY, INC. 1225 1st St. Port Washington

SEE QUESTIONS ON REVERSE

431 A 7-32 N.Y. P

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 8

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

RECEIVED twenty nine thousand eight & 50/100 DOLLARS : 21138.50
 one hundred and thirty eight & 50/100 DOLLARS : 21138.50

being the First Premium (including premiums for Disability and Double Indemnity Benefits, if any) upon

Policy No. 12241201, issued upon the life of Florence Guggenheim

considering said Policy to be in full payment of the sum insured to wit: \$25,000.00

This receipt is not valid unless Premium is paid, and this receipt countersigned and dated the day of payment by

The Charles B. Knight Agency
 or such person as is authorized below.

Authority to accept payment hereof on my account and to receipt therefor is hereby given

to *Shirley J. Knight*
Charles B. Knight
 Remittance check made payable to THE UNION CENTRAL LIFE INSURANCE CO.

Paid at

this day of 19

Agent.

Richard S. Root
 SECRETARY

Agents are not authorized to Grant Forfeiture.
 Make or Alter Contracts or Waive Forfeiture.

8/

435 7-34

Exhibit I Annexed to Stipulation

Policy No. 1,226,201 of the Union Central Insurance Company.

(Photostat Opposite)

Sheet 9

4 5
◀ 1226201 ▶

THE UNION CENTRAL LIFE INSURANCE COMPANY

CINCINNATI, OHIO

Insurance on the Life of

Florence Guggenheim

Amount \$ 25,000.00

Date of Issue January 7, 1935

Premium \$ 21,138.50

Agent

The Charles B. Knight Agency
Gen'l Agt.

Kind

4221 A
Edition 1934

Single Premium Life.
Annual Dividends.

1-76

7

79

Avoid unnecessary expense by communicating with the Company
or its Agent relative to any settlement under this policy.

IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION FOR JUDGMENT

SIR:

Please Take Notice that upon the pleadings in this action and a stipulation of facts heretofore filed herein the undersigned will move this Court, at the United States Court-house, in the Borough of Brooklyn, City of New York, on the 7th day of June, 1939, at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, for judgment on the pleadings, pursuant to Rule 12(c) of the New Rules of Civil Procedure for District Courts of the United States in favor of the plaintiff, with costs, and for such other and further relief in the premises as to the court may seem just and proper.

Dated, New York, June 1, 1939.

Yours, etc., Paul B. Barringer, Jr., Attorney for
Plaintiff, Office & P. O. Address, 15 Broad Street,
Borough of Manhattan, New York City.

To Hon. Vine H. Smith, United States Attorney, United
States Court House, Brooklyn, N. Y.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

Civil No. 57 July 5, 1939

[Same Title]

Appearances:

Paul B. Barringer, Jr., Esquire, Attorney for Plaintiff.
John G. Jackson, Jr., Esquire, Of Counsel.

Vine H. Smith, Esquire, United States Attorney, Attorney for Defendant. William S. Perlman, Esquire, Assistant United States Attorney.

OPINION

GALSTON, D. J.:

The plaintiff moves upon the pleadings in the action and on a stipulation of facts for judgment on the pleadings pursuant to Rule 12(c) of the Rules of Civil Procedure.

The action is one for the recovery of a federal gift tax assessment for the calendar year 1934. On or about March 15, 1935 the plaintiff filed with the Collector of Internal Revenue a federal gift tax return and paid a tax in the amount of \$52,872.93. In this return there were reported gifts of nine single premium life insurance policies; two of them to M. Robert Guggenheim, having a combined cash surrender value on the date of the gift of \$155,915.09; four to Gladys C. Straus, having a combined cash surrender value on the date of the gift of \$251,012.26; and three to Harry G. Guggenheim, having a cash surrender value on the date of the gift of \$310,417.40.

The complaint alleges that the Commissioner of Internal Revenue determined that the aforesaid policies should have been valued not on their cash surrender value on the date of the gift but on the basis of their cost to the plaintiff. Accordingly he ruled that the values of the policies respectively were \$189,901.70, \$295,412.30 and \$367,124.57, and assessed a deficiency against the plaintiff in the sum of \$13,804.69, together with interest thereon in the amount of \$1,450.05. These amounts were paid by the plaintiff to the defendant on or about January 25, 1937.

The plaintiff on or about June 30, 1938 filed a claim for refund for these payments, which claim was rejected on October 6, 1938. Plaintiff alleges that the true market value of the policies, when they were irrevocably assigned to the donees, was their cash surrender value.

The answer in effect admits all of the foregoing allegations of the complaint and raises no issue of fact; but alleges that the Commissioner correctly determined the amount of the gifts to be the cost to plaintiff of the contracts of insurance, and denies that the best evidence of the market value is their cash surrender value.

The question is then purely one of law, as to whether the tax should be based on the cash surrender value of the policies or the cost to the plaintiff.

The Revenue Act of 1934 enacted on May 10, 1934 determines the rights of the parties. It appears that in that act there was no alteration of Sec. 506 of the Revenue Act of 1932. That act provided:

"If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

That language is sufficiently clear and apparently is in no sense ambiguous or difficult to interpret. Nevertheless, because doubtless of its general terms, the Commissioner of Internal Revenue on October 30, 1933 set forth the following regulation, Article 2 (5) of Regulation 79:

"5. The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."

It must be presumed that when Congress re-enacted in 1934 Sec. 506 of the Revenue Act of 1932, it had knowledge of the foregoing regulation promulgated by the Treasury Department and approved it. *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488; *National Lead Co. v. U. S.*, 252 U. S. 140 at 146.

The plaintiff, in accordance with the foregoing provision of the law and regulation of the Commissioner of Internal Revenue, paid her gift tax as shown by her 1934 gift tax return.

It appears that the Revenue Act of 1935 made no changes in Sec. 506 of the Revenue Act of 1932. Nevertheless on February 26, 1936 the departmental regulations were changed, and Article 19 (9) of Regulation 79 provided:

"(9) The values of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular con-

tract by the company, or through the sale by the company of comparable contracts. * * *

“Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.”

It is to be noted that this rule defines the value of a life insurance contract to be the amount paid to the company for the insurance, which is, of course, quite different from the regulation of the Treasury Department of October 30, 1933, which set forth the surrender value of such policy as the true measure of value.

To apply the 1936 regulation retroactively, if indeed it can be applied even prospectively with validity, is attended with much difficulty. It is, of course, conceivable that a regulation promulgated by an executive branch of the Government may require correction, but where the Department has acted for years under an expressed interpretation and Congress implicitly has accepted such interpretation through re-enactment of the same statute, the new interpretation should not without a showing of Congressional authority have a retroactive effect. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110.

In *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, it was said:

"The re-enactment of the statute by Congress as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed."

Nor can the view be ignored that where administrative boards or executive departments are empowered to prescribe regulatory provisions affecting a Congressional statute, such regulations have the full force and effect of law, if encompassed within the scope of the statute. So that it must follow that when the plaintiff in 1934 acted within the provisions of the Treasury regulations effective at that time, she was acting within the law. Application of the 1936 regulation would in effect attempt to destroy the legality of the plaintiff's act without warrant of law.

In facts substantially similar to those presented on the pleadings herein, the question was re-examined in *Commissioner v. Mary H. Haines*, by the Circuit Court of Appeals for the Third Circuit, not yet officially reported, and with reliance on *Helvering v. R. J. Reynolds Tobacco Co.*, supra, that court held that the tax must be assessed on the cash surrender value of the policies at the time the gift was made in accordance with the regulations then in force.

The motion for judgment on the pleadings is opposed and it is contended in the brief, as it was at the argument, that the stipulation of facts filed in the cause was executed by the Government not for submission on this motion, but for use at the trial. Strictly speaking, of course, the stipulation may not be considered on a motion for judgment on the pleadings and the technical position taken by the Government must be sustained. So the motion will be consid-

ered only on the pleadings. The motion is, moreover, resisted because it is asserted that the Government intends to prove at the trial (1) that the plaintiff applied for and obtained each of these policies for the purpose of making gifts of the policies; (2) that the amount of prospective dividends on eight of the nine policies and the actual reserve on these policies were in excess of the cash surrender value.

But both of these matters may be admitted for the sake of the argument, without impairing the full force and effect of plaintiff's contention that under existing law, at the time that the gifts were made, the cash surrender value was the determinant of the value of the gift.

It is inconceivable how any evidence that the defendant may seek to adduce, as suggested in its brief, bearing upon the age of the plaintiff—it is said she was seventy-one years of age when the policies were applied for—can in any way effect this result. Certainly her age is not a factor that enters into the question whether the gift tax should be based on the surrender value of the policy or the premium that she paid. Likewise the suggestion that the defendant is seeking an investigation concerning the reserves set up by insurance companies in the determination of the cash surrender value of policies is likewise immaterial. Judicial notice may well be taken that cash surrender values as determined by insurance companies are based upon strict actuarial computations; and there is no suggestion that in the open market a buyer could be found who would pay a greater sum for the policies than that which the insurance actuaries determine to be their cash surrender values. Certainly defendant's investigation into the accuracy of such

calculations cannot compel a finding that the insurance companies should pay a greater cash surrender value than they stipulate to pay in the contracts of insurance.

Accordingly the plaintiff's motion for judgment on the pleadings is granted.

— —, U. S. D. J.

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NEW YORK.

Civil No. 57

JUDGMENT

A motion having been made herein on behalf of the plaintiff for judgment in her favor on the pleadings, consisting of a complaint and the answer thereto, and said motion having been granted by the opinion of Judge Galston entered in the office of the Clerk of this Court on July 5, 1939,

It is on motion of Paul B. Barringer, Jr., attorney for the plaintiff

Ordered, Adjudged and Decreed that the plaintiff Florence Guggenheim, recover of the defendant Almon G. Rasquin, individually and as United States Collector of Internal Revenue for the First District of New York, the sum of Fifteen Thousand Two Hundred Fifty-four and 74/100 Dollars (\$15,254.74) together with interest thereon from January 25, 1937, in the amount of Two Thousand Two Hundred Sixty Two and 79/100 Dollars (\$2,262.79), making a total of Seventeen Thousand Five Hundred Seventeen and 53/100 Dollars (\$17,517.53), and that plaintiff have execution therefor.

Judgment approved; Dated: July 14th, 1939.

Clarence G. Galston, U. S. D. J. Percy G. B. Gilkes,
Clerk, by S. P. Feuer, Deputy Clerk.

Judgment rendered dated July 14th, 1939.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

Civil No. 57

AMENDED JUDGMENT

Upon the annexed stipulation and affidavit, it is on motion of Vine H. Smith, United States Attorney for the Eastern District of New York, attorney for the defendant,

Ordered that the judgment heretofore filed in the office of the Clerk of the United States District Court for the Eastern District of New York on the 14th day of July, 1939, be and hereby is amended as follows:

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
NEW YORK

Civil No. 57

FLORENCE GUGGENHEIM, Plaintiff,

against

ALMON G. RASQUIN, individually and as United States Collector of Internal Revenue for the First District of New York, Defendant

JUDGMENT

A motion having been made herein on behalf of the plaintiff for judgment in her favor on the pleadings, consisting of a complaint and the answer thereto, and said motion having been granted by the opinion of Judge Galston entered in the office of the Clerk of this Court on July 5, 1939,

It is on motion of Paul B. Barringer, Jr., attorney for the plaintiff

Ordered, Adjudged and Decreed that the plaintiff Florence Guggenheim, recover of the defendant Almon G. Rasquin, individually and as United States Collector of Internal Revenue for the First District of New York, the sum of Fifteen Thousand Two Hundred Fifty-four and 74/100

Dollars (\$15,254.74) together with interest thereon from January 25, 1937, and that plaintiff have execution therefor.

Judgment approved; Dated: July 14th 1939.

(Signed) Clarence G. Galston, U. S. D. J.; Percy G. B. Gilkes, Clerk, by S. R. Feuer, Deputy Clerk.

Judgment rendered dated July 14th, 1939.

It is Further Ordered that the Clerk of this Court amend the judgment accordingly.

Dated: Brooklyn, New York, August 26th, 1939.

(Sgd.) Clarence G. Galston, U. S. D. J.

STIPULATION ANNEXED TO AMENDED JUDGMENT

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

Civil No. 57

FLORENCE GUGGENHEIM, Plaintiff,

against

ALMON G. RASQUIN, individually and as United States Col-
lector of Internal Revenue for the First District of New
York, Defendant

It is Hereby Stipulated and Agreed by and between the
attorneys for the respective parties herein that the judg-
ment heretofore entered herein by the Clerk of the United
States District Court for the Eastern District of New York
on the 14th day of July, 1939 be and hereby is amended to
read as follows:

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

Civil No. 57

FLORENCE GUGGENHEIM, Plaintiff,

against

ALMON G. RASQUIN, individually and as United States Col-
lector of Internal Revenue for the First District of New
York, Defendant

JUDGMENT

A motion having been made herein on behalf of the plaintiff for judgment in her favor on the pleadings, consisting of a complaint and the answer thereto, and said motion having been granted by the opinion of Judge Galston entered in the office of the Clerk of this Court on July 5, 1939, It Is on motion of Paul B. Barringer, Jr., attorney for the plaintiff,

Ordered, Adjudged and Decreed that the plaintiff Florence Guggenheim, recover of the defendant Almon G. Rasquin, individually and as United States Collector of Internal Revenue for the First District of New York, the sum of Fifteen Thousand Two Hundred Fifty-four and 74/100 Dollars (\$15,254.74) together with interest thereon from January 25, 1937, and that the plaintiff have execution therefor.

Judgment approved; Dated: July 14th, 1939.

(Signed) Clarence G. Galston, U. S. D. J.; Percy G. B. Gilkes, Deputy Clerk, Clerk, by S. R. Feuer.

Judgment rendered dated July 14th, 1939.

It is Further Stipulated and Agreed that the amended judgment as above set forth may be submitted for settlement and signature without notice by either party.

Dated: Brooklyn, New York, August 14th, 1939.

(Sgd.) Vine H. Smith, United States Attorney, Attorney for Defendant, by Mario Pittoni, Assistant U. S. Attorney; Paul B. Barringer, Attorney for Plaintiff.

AFFIDAVIT ANNEXED TO AMENDED JUDGMENT

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

Civil No. 57

FLORENCE GUGGENHEIM, Plaintiff,
againstALMON G. RASQUIN, individually and as United States Col-
lector of Internal Revenue for the First District of New
York, Defendant

EASTERN DISTRICT OF NEW YORK, ss:

Herbert I. Sorin, being duly sworn, deposes and says:

I am an Assistant United States Attorney duly appointed according to law, and am familiar with the above-entitled action. The source of my information is official documents and correspondence now in the custody of the United States Attorney's office.

On July 14, 1939 judgment was entered by the Clerk of this District against the above-named defendant for the principal amount of \$15,254.74 "together with interest thereon from January 25, 1937 in the amount of \$2,262.79, making a total of \$17,517.53 * * *".

Since the entry of this judgment, I have been informed by the Department of Justice at Washington, D. C. that the recital of interest as above set forth is contrary to the provisions of Section 615 of the Revenue Act of 1928, in that interest on judgments for tax overpayment is not authorized.

I have transmitted this view to the attorneys for the plaintiff, and they have agreed to stipulate that the judgment be amended accordingly.

Wherefore, it is respectfully requested that the judgment be amended in pursuance of the stipulation dated August 14, 1939, and of the Revenue Act of 1928, Section 615.

(Sgd.) Herbert I. Sorin.

Sworn to before me this 22nd day of August, 1939.
Edw. E. Fay, United States Commissioner, E. D.
N. Y.

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

Notice is hereby given that Almon G. Rasquin, individually and as United States Collector of Internal Revenue for the First District of New York, defendant-appellant above named, hereby appeals to the Circuit Court of Appeals for the Second Circuit from the decision herein, dated July 5, 1939, entered in the office of the Clerk of the United States District Court for the Eastern District of New York on said date, and from the judgment on the pleadings entered in this action on July 14, 1939, and from the amended judgment entered in this action on August 26, 1939, and from each and every part of said judgment, and from each and every part of said decision.

Dated, Brooklyn, New York, October 10, 1939.

Harold M. Kennedy, United States Attorney, Eastern District of New York, Attorney for Defendant-Appellant, 519 Federal Building, Borough of Brooklyn, City of New York. By (Sgd.) Frank J. Parker, Asst. U. S. Attorney.

To Percy G. B. Gilkes, Clerk, U. S. District Court, Eastern Dist. of New York.

Paul B. Barringer, Jr., Attorney for Plaintiff-Appellee, 15 Broad Street, New York City.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the foregoing is a true transcript of the record of the District Court of the United States for the Eastern District of New York in the above-entitled matter as agreed on by the parties.

Dated, Brooklyn, N. Y., November 17, 1939.

Paul B. Barringer, Attorney for Plaintiff-Appellee.
Harold M. Kennedy, United States Attorney, At-
torney for Defendant-Appellant. Frank J. Parker.

Clerk's Certificate to foregoing transcript omitted in
printing.

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[fol. 194] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 217—October Term, 1939.

(Argued February 14, 1940. Decided March 18, 1940.)

FLORENCE GUGGENHEIM, Plaintiff-Appellee,
against

ALMON G. RASQUIN, Collector of Internal Revenue for the
First District of New York, Defendant-Appellant

Action by Florence Guggenheim against Almon G. Rasquin, Collector of Internal Revenue for the First District of New York, to recover an amount paid as gift tax. From a judgment for the plaintiff, entered on motion for judgment on the pleadings, the defendant appeals.

Reversed.

Before: Swan, Augustus N. Hand and Patterson, Circuit
Judges

Samuel O. Clark, Jr., Sewall Key and Arthur L. Jacobs
for appellant.

Paul B. Barringer, Jr. (John G. Jackson, Jr., of counsel)
for appellee.

[fol. 195] PATTERSON, Circuit Judge.

The plaintiff in December 1934 took out nine life insurance policies on the single premium basis, that is to say, with the premium paid in advance in a lump sum. The policies were payable to her estate. At the time of taking them out, and as to some of the policies prior to formal issuance, the plaintiff assigned them to three children by gift. The policies insured the plaintiff's life for \$1,000,000, and the cost to the plaintiff was \$852,438.50, fully paid at the time of issuance. She made a return for gift tax, listing the policies at a value of \$717,344.81, said to represent their cash surrender value immediately after issuance, and paid gift tax on the basis that she had made gifts of that value. The Commissioner of Internal Revenue determined that the value of the gifts was the cost of the policies to the plaintiff, \$852,438.50, and assessed a tax deficiency of \$13,804.69.

The plaintiff paid the amount demanded and after denial of claim for refund brought action against the collector to recover the additional tax paid.

The facts were covered in the pleadings and in a stipulation. The district judge granted the plaintiff's motion for judgment on the pleadings and entered judgment for the plaintiff. He held that the value of the gifts was the cash surrender value of the policies immediately after issuance. As to cash surrender value, it appears from the terms of the policies that they may be realized on after the first policy year. The plaintiff alleged, however, that cash surrender values at the time of the gifts were furnished her by the insurance companies at the amounts specified in her return, \$717,344.81, and the defendant did not take issue with the allegation that the cash surrender values totalled \$717,344.81.

Where a donor takes out life insurance on payment of single premium and at the same time makes an irrevocable gift of the policy to a donee, which amount should be taken [fol. 196] as the value for gift tax, the cost to the donor or the cash surrender value of the policy in the hands of the donee immediately after issuance? The difference is considerable, over \$135,000 in the instant case. We are of opinion that the value for gift tax is the cost of the policy to the donor.

Under the Revenue Act of 1932, the gift tax is imposed on the donor. If the gift is in property, "the value thereof at the date of the gift shall be considered the amount of the gift". Section 506. When the property given is a life insurance policy, the value is the amount that it would cost to duplicate the policy at the time of the gift. That is the value commonly recognized by the courts in actions for conversion of a policy, in actions for breach of contract to issue a paid-up policy, and in allowing claims against insolvent life insurance companies. *Sedgwick on Damages*, section 730; *Sutherland on Damages*, section 838; *New York Life Ins. Co. v. Statham*, 93 U. S. 24; *Bass v. Life and Annuity Assn.*, 96 Kan. 205, 150 Pac. 588; *Ebert v. Mutual Reserve Fund Life Assn.*, 81 Minn. 116; *People v. Security Life Ins. Co.*, 78 N. Y. 114; *Toplitz v. Bauer*, 161 N. Y. 325; *Speer v. Phoenix Mutual Life Ins. Co.*, 36 Hun 322; *Universal Life Ins. Co. v. Binford*, 76 Va. 103; *Bell's Case*, L. B. 9 Eq. Cas. 705; *In re English Assurance Co.*, L. R. 14

Eq. Cas. 72. It is true that the cost of a similar policy does not meet all cases, as where the insured has become uninsurable at the time as of which the value of the policy is to be determined. But it is generally a more accurate measure of value than the amount of money allowed by the company for surrender of the policy. *Toplitz v. Bauer*, *supra*; *Speer v. Phoenix Mutual Life Ins. Co.*, *supra*; *In re English Assurance Co.*, *supra*. And in a case like the present one, where the policy is given away at the time it is taken out, there is no uncertainty as to its worth. The worth is established convincingly by what the donor paid for the policy on that very day.

[fol. 197] Cash surrender value, on the other hand, is merely the money which the company will pay on surrender of a policy for cancellation. The amount corresponds to the reserve on the policy less a surrender charge. It represents the value only in the event of surrender. With policies on an annual premium basis, it is the general practice not to allow cash surrender value for the first two years. *Life Insurance*, MacLean, 4th Ed., page 161; *Life Insurance*, Huebner, page 321. It would hardly be urged, however, that a life insurance policy was worthless until the third year, or that the gift of a policy less than three years old was not subject to gift tax on the ground that the property given had no value. Yet that would be the result if cash surrender value were the determining factor under the gift tax law.

Suppose a case where a parent pays \$1,000 for an automobile to be delivered to a son as a gift. The value of the gift is what the donor gave up for it, \$1,000, not the smaller amount that the son might be able to induce the dealer to allow him in cash on a surrender of the automobile. We see no difference in principle between that case and a case where the parent takes out a single premium paid-up life insurance policy and gives it to a son forthwith. The value of the gift is what the parent paid for the policy, not what the son might obtain for it by surrendering it to the insurance company. The gift tax, it is to be borne in mind, is imposed on the donor and is measured by the value of the property given by him, not by the value of the property in the hands of the donee. Here the donor's estate was depleted by the amount which she paid for the policies, not by their surrender value.

The taxpayer relies on Article 2(5) of Treasury Regulations 79, as it read prior to 1936:

"The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constituting [fol. 198] a gift in the amount of the cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."

The regulation was evidently designed for a case where a policy was given away some time after issuance. We do not interpret it as intended for a case where a single premium policy is given away simultaneously with issuance. If it was intended to govern such a case, the reference to "prepaid insurance" might well be said to set the value at the amount of the single premium payment, which accords with our views of the value of the gift. As the Supreme Court recently said of another former regulation relative to gift tax, "At most the regulation is ambiguous and without persuasive force in determining the true construction of the statute." *Estate of Sanford v. Commissioner*, 308 U. S. 39, 49. And in any event, the present case is touched by the next paragraph in the Regulations, Article 2(6):

"Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment is a gift in the amount thereof."

The regulations as they stood in 1935 did not prescribe that cash surrender value be taken as the value of the gift in a case like the present. On the contrary, they were quite as consistent with the view which seems to us the correct one, that where a donor takes out life insurance for the benefit of another irrevocably, the value of the gift is the premium paid by the donor. In 1936 the regulations were changed so as to eliminate any confusion and to provide explicitly that in such an instance the value of the gift is to be measured by the cost of the insurance.

[fol. 199] There are cases to the effect that cash surrender value governs for purposes of gift tax in the case of gifts of life insurance policies made prior to 1936. *Commissioner v. Haines*, 104 F. 2d, 854 (C. C. A. 3); *Helvering v. Cronin*,

106 F. 2d, 907 (C. C. A. 8); *Helvering v. Bryan*, decided January 31, 1940 by the Fourth Circuit. Those cases rest on an interpretation of former Article 2(5) to which we cannot accede. There is a decision the other way in the district court, *Ryerson v. United States*, 28 F. Supp. 265 (D. C. Ill.), with which we are in accord.

The Commissioner assessed the tax on the proper basis, the cost of the policies to the donor at the time of the gift. Judgment should have been entered for the defendant.

Reversed.

[fol. 200] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 3rd day of April one thousand nine hundred and forty.

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand,
Hon. Robert P. Patterson, Circuit Judges.

FLORENCE GUGGENHEIM, Plaintiff-Appellee,

vs.

ALMON G. RASQUIN, Collector, etc., Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 201] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. *Florence Guggenheim v. Almon G. Rasquin, Collector, etc.* Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 3, 1940. D. E. Roberts, Clerk.

[fol. 202] UNITED STATES OF AMERICA, SOUTHERN DISTRICT
OF NEW YORK

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 201, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Florence Guggenheim, Plaintiff-Appellee, against Almon G. Basquin, Collector, etc., Defendant-Appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this eighth day of May, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fourth.

D. E. Roberts, Clerk. (Seal.)

(8121)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.

Endorsed on Cover: Enter Paul B. Barringer, Jr. File No. 44,437, U. S. Circuit Court of Appeals, Second Circuit, Term No. 92, Florence Guggenheim, Petitioner, vs. Almon Q. Rasquin, Individually and as United States Collector of Internal Revenue for the First District of New York. Petition for a writ of certiorari and exhibit thereto. Filed May 21, 1940. Term No. 92 O. T. 1940.

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FILE COPY

Office - Supreme Court, U. S.

FILED

MAY 21 1940

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [REDACTED]

92

FLORENCE GUGGENHEIM

Petitioner

v.

ALMON Q. RASQUIN, individually and as United States Collector
of Internal Revenue for the First District of New York
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT AND BRIEF IN SUPPORT
THEREOF.

✓ PAUL B. BARRINGER, JR.,
Counsel for Petitioner.

Of Counsel,
JOHN G. JACKSON, JR.

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INDEX.

PAGE

Opinions below	1
Jurisdiction	2
Question presented	2
Statutes and Regulations involved	2
Statement	2
Specifications of errors	4
Reasons for granting the writ	4
Conclusion	6
Appendix	7

CITATIONS.

CASES:

<i>Commissioner v. Haines</i> , 104 F. (2d) 854, (C. C. A. 3)	5
<i>Helvering v. Bryan</i> , 109 F. (2d) 430, (C. C. A. 4)	5
<i>Helvering v. Cronin</i> , 106 F. (2d) 907, (C. C. A. 8)	5
<i>Helvering v. R. J. Reynolds Tobacco Co.</i> , 306 U. S. 110	3, 5
<i>Louis Florsheim</i> , Memo. B. T. A., Sept. 11, 1939	5
<i>Madeleine D. Powers</i> , Memo. B. T. A. Jan. 9, 1939 ..	5
<i>McCaughn v. Hershey Chocolate Co.</i> , 283 U. S. 488. .	3
<i>National Lead Co. v. U. S.</i> , 252 U. S. 140	3
<i>Ryerson v. U. S.</i> , 28 F. Supp. 265	1

STATUTES:

Section 240 of the Judicial Code—28 U. S. C. A.	
#347	2
Revenue Act of 1932, sec. 506	3, 4
Revenue Act of 1934, sec. 506	3, 4, 5
Revenue Act of 1935, sec. 506	4, 5

REGULATIONS:

Regulations 79, Article 2(5)—1933 Edition	3, 4, 5
Regulations 79, Article 19(9)—1936 Edition ..	3, 5

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No.

FLORENCE GUGGENHEIM

Petitioner

v.

ALMON Q. RASQUIN, individually and as United States Collector of Internal Revenue for the First District of New York

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of FLORENCE GUGGENHEIM respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review an Order for Mandate of that Court entered in this case on April 3, 1940, reversing the decision of the United States District Court for the Eastern District of New York.

Opinions Below

The opinion of the District Court is reported in 28 F. Supp. 322. The opinion of the Circuit Court of Appeals is reported in 110 F. (2d) 371.

Jurisdiction

The order for mandate of the Circuit Court of Appeals reversing the decision of the District Court was entered on April 3, 1940 (R. 200). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended.

Question Presented

The question presented is the value for purposes of the gift tax law of a gift in 1934 of nine single premium life insurance policies. The petitioner contended that the value of the single premium life insurance policies was their cash surrender value on the date of the gift, which is in accord with the Treasury Regulations in effect at the time of the gift. The respondent contended that the value of the gifts was their cost to the petitioner, basing his contention upon the rule of value set forth in the Treasury Regulations adopted in 1936.

Statutes and Regulations Involved

The statutes and the regulations involved will be found in the Appendix, *infra*, pages 7-10.

Statement

The following facts are taken from the stipulation of facts and admitted facts alleged in the complaint.

The petitioner in 1934 took out nine single premium life insurance policies and irrevocably assigned them on the date they were taken out to three of her children by gift. No incidents of ownership were retained by the petitioner. The policies insured the petitioner's life for \$1,000,000. The cost to the petitioner was \$852,438.50, and

the cash surrender value on the date the policies were assigned was \$717,344.81. The petitioner filed a gift tax return listing the policies at their cash surrender value of \$717,344.81, and paid a gift tax thereon.

The Commissioner of Internal Revenue determined that the value of the gifts was the cost of the policies to the petitioner, \$852,438.50, and assessed a tax deficiency of \$13,804.69. The petitioner paid the amount demanded and after denial of claim for refund brought action against the respondent to recover the additional tax paid.

The District Court, in granting the petitioner's motion for judgment on the pleadings, held (R. 175-181) that:

(1) Article 2 (5) of Regulations 79, promulgated on October 30, 1933, interpreted Section 506 of the Revenue Act of 1932 and set forth the rule that the cash surrender value of a single premium life insurance policy is the true measure of value for gift tax purposes.

(2) When Congress re-enacted in 1934 Section 506 of the Revenue Act of 1932, it had knowledge of the foregoing regulation and approved it. *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488; *National Lead Co. v. U. S.*, 252 U. S. 140.

(3) Where the Treasury Department has acted for years under an expressed interpretation (Article 2 (5) of Regulations 79—1933 edition) and Congress implicitly has accepted such interpretation through re-enactment of the same statute, a new interpretation (Article 19 (9) of Regulations 79—1936 edition) should not without a showing of Congressional authority have a retroactive effect. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110.

The Circuit Court of Appeals (R. 194-199) reversed the decision of the District Court and held that where a donor takes out a single premium life insurance policy and irrevocably assigns it to another, the value of the gift is the premium paid by the donor.

Specifications of Errors

The Circuit Court of Appeals erred:

1. In holding that the Treasury Regulations in effect in 1934 did not prescribe that cash surrender value be taken as the value of a gift of a single premium life insurance policy.
2. In holding that the value for gift tax purposes of a gift of a single premium life insurance policy is not the cash surrender value of the policy when it is irrevocably assigned.
3. In holding that the value for gift tax purposes of a gift of a single premium life insurance policy is to be measured by the cost of the insurance.

Reasons for Granting the Writ

Section 506 of the Revenue Act of 1932 provides that: "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift". Treasury Regulations 79, Article 2 (5) promulgated October 30, 1933, provides:

"The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."

Three Circuit Courts of Appeals have held that Article 2 (5) is a reasonable and consistent interpretation of Section 506 of the Revenue Act of 1932 and that Article 2 (5) provides that the value of a gift in 1934 or 1935 of single premium life insurance policies is the cash surrender value of the policies at the time they were irrevocably as-

signed—*Commissioner v. Haines*, 104 F. (2d) 854, (C. C. A. 3); *Helvering v. Cronin*, 106 F. (2d) 907, (C. C. A. 8) and *Helvering v. Bryan*, 109 F. (2d) 430 (C. C. A. 4). Further, these Circuits Courts held, on the authority of *Helvering v. Reynolds Tobacco Co.*, *supra*, that since Article 2 (5) had the approval of Congress by the re-enactment of Section 506 in the Revenue Acts of 1934 and 1935, Article 2 (5) of the 1933 Treasury Regulations had the force and effect of law, and the 1936 Treasury Regulation (Article 19 (9)) could not be given retroactive effect.

The Second Circuit Court of Appeals in the instant case, in direct conflict with these cases, held:

"There are cases to the effect that cash surrender value governs for purposes of gift tax in the case of gifts of life insurance policies made prior to 1936. *Commissioner v. Haines*, 104 F. (2) 854, (C. C. A. 3); *Helvering v. Cronin*, 106 F. (2) 907, (C. C. A. 8); *Helvering v. Bryan*, decided February 31, 1940, by the Fourth Circuit. These cases rest on an interpretation of former Article 2 (5) to which we cannot accede. There is a decision the other way in the district court, *Ryerson v. United States*, 28 F. Supp. 265 (D. C. Ill.), with which we are in accord."

The case of *Ryerson v. U. S.*, *supra*, is on appeal to the Sixth Circuit Court of Appeals. The Solicitor General has authorized appeals in the case of *Madeleine D. Powers*, Memo. B. T. A. Jan. 9, 1939, to the First Circuit Court of Appeals, and in the case of *Louis Florsheim*, Memo. B. T. A. Sept. 11, 1939, to the Seventh Circuit Court of Appeals. In these cases the same question of valuation for gift tax purposes of single premium life insurance policies is involved.

Conclusion.

The decision of the Second Circuit Court of Appeals in this case is in conflict with decisions of other Circuit Courts of Appeals. This case involves a decision on an important question of Federal gift tax law not decided by this Court. It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

PAUL B. BARRINGER, JR.,
Counsel for Petitioner.

Of Counsel,
JOHN G. JACKSON, JR.

APPENDIX.

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932, and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * * (U. S. C., Title 26, Sec. 551.)

SEC. 506. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. (U. S. C., Title 26, Sec. 555.)

Treasury Regulations 79, pertaining to the Revenue Act of 1932, promulgated October 30, 1933:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise; whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

ART. 19. Valuation of property—(1) General—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. . . .

Subdivisions (2) to (8), inclusive, of this article deal, respectively, with the valuation of real estate, stocks and bonds, interest in business; notes, secured and unsecured; intangibles; annuities, life, remainder, and reversionary interests; and tenancies by the entirety.

Treasury Regulations 79, relating to the Revenue Act of 1932, promulgated February 26, 1936:

ART. 2. Transfers reached.—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. . . . In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made

payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

ART. 19. *Valuation of property.*—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. . . .

(9) *Life insurance and annuity contracts.*—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

The examples given below, so far as relating to life insurance contracts, are of gifts of such contracts

on which there are no accrued dividends or outstanding indebtedness.

Example: A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity; the value of the gift is the cost of the contract.

Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

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CHARLES ELMORE CROPLEY
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OCTOBER TERM, 1940.

No. 92.

FLORENCE GUGGENHEIM,

Petitioner,

vs.

ALMON Q. RASQUIN, individually and as United States Collector
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER.

PAUL B. BARRINGER, JR.,
Counsel for Petitioner.

Of Counsel:

JOHN G. JACKSON, JR.

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INDEX.

BRIEF FOR THE PETITIONER

	PAGE
OPINION	1
JURISDICTION	1
QUESTION PRESENTED	1
STATUTES AND REGULATIONS INVOLVED	2
STATEMENT	3
SPECIFICATION OF ERRORS URGED	6
SUMMARY OF ARGUMENT	7
POINT I.—The petitioner's liability for 1934 gift tax is to be determined by the approved Regulations then in effect	8
POINT II.—Article 2(5) of Regulations 79 (1933 Ed.) prescribes the rule for valuing gifts of life insur- ance contracts	12
POINT III.—Article 2(5) of Regulations 79 (1933 Ed.) is a reasonable and consistent interpretation of Section 506 of the Revenue Act of 1932.....	16
CONCLUSION	23
APPENDIX	25

TABLE OF CASES

	PAGE
<i>Behrend v. Commissioner</i> , 23 B. T. A. 1037, 1041(A)	22
<i>Blaffer v. Comm.</i> , 103 F. (2) 489 (C. C. A. 5)	6n
<i>Commissioner v. Haines</i> , 104 F. (2) 854 (C. C. A. 3)	6n, 15
<i>Commissioner v. Powers</i> (1940 Prentice-Hall Federal Tax Service, Par. 62,785, cert. granted Nov. 12, 1940)	5n, 16, 20
<i>Corning, Edith W.</i> , Memo B. T. A. Jan. 30, 1940, appealed to C. C. A. 6	6n, 15
<i>Corning, Henry W.</i> , Memo B. T. A. December 8, 1938	6n, 15
<i>Desloge v. Firmin</i> , Memo B. T. A. March 18, 1940	6n, 16
<i>Farish v. Comm.</i> , 103 F. (2) 1011 (C. C. A. 5)	6n
<i>Florsheim, Louis</i> , Memo B. T. A. Sept. 11, 1939, appealed to C. C. A. 7	6n, 15
<i>Guggenheim v. Rasquin, supra</i> (D. C. E. D. N. Y.) ...	6n
<i>Hardy, Estate of Waller C.</i> , Memo B. T. A. June 28, 1940	6n, 16
<i>Helvering v. Bryan</i> , 109 F. (2) 430 (C. C. A. 4)	6n, 15
<i>Helvering v. Cronin</i> , 106 F. (2) 907 (C. C. A. 3) ..	6n, 11, 15
<i>Helvering v. R. J. Reynolds Tobacco Co.</i> , 306 U. S. 110	5, 11
<i>Helvering v. R. J. Reynolds Company</i> , 59 S. Ct. 423, 426, 83 L. Ed. decided January 30, 1939	16
<i>Helvering v. Winmill</i> , 305 U. S. 79, 83	9
<i>Houston, Samuel F.</i> , Memo B. T. A. March 5, 1940.	6n, 7, 16
<i>Ithaca Trust Co. v. U. S.</i> , 279 U. S. 151	20
<i>Kesner, Bettie F.</i> , Memo B. T. A. Jan. 30, 1940, appealed to C. C. A. 7	6n, 15

	PAGE
<i>Kirk, Elizabeth S.</i> , 39 B. T. A. 902, appealed to C. C. A. 3	6n, 15
<i>Lockhart, Charles</i> , Memo B. T. A. June 30, 1938, peti- tion for review dismissed by C. C. A. 3 on 9/15/39	6n, 15
<i>Lucas v. Alexander</i> , 279 U. S. 573	19, 20
<i>McCaughn v. Hershey Chocolate Co.</i> , 283 U. S. 488..	5, 10
<i>National Lead Co. v. U. S.</i> , 252 U. S. 140, 146	5
<i>Ryerson v. U. S.</i> , 28 F. Supp. 265, reversed 114 (F. 2) 150, cert. granted Nov. 12, 1940	6n, 16
<i>Simpson v. U. S.</i> , 252, U. S. 547	20
<i>Speer v. Phoenix Mutual Life Insurance Company</i> , 36 Hun. 322, 325	18
<i>Supplee, Flora D.</i> , Memo B. T. A. June 26, 1939, appealed to C. C. A. 7	6n, 15
<i>U. S. v. Ryerson</i> , supra (C. C. A. 7) cert. granted Nov. 12, 1940	6n, 11, 14, 15

STATUTES, REGULATIONS AND MISCELLANEOUS AUTHORITIES

American Experience Table of Mortality	20
Bankruptcy Act, 11 United States Code, Title 11, Section 110(a)	5-18
G. C. M. 13147	9, 14, 29
Judicial Code (Section 240(a))	1
Motor Carrier Act, 1935	19
Regulations 79, Article 19(1)—1933 Edition, 7, 8, 12, 13, 17, 23	
Regulations 79, Article 2(5)—1933 Edition, 4, 6, 7; 9, 10, 12, 15, 16, 17, 22, 25, 26, 29, 30	
Regulations 79, Article 19(9)—1936 Edition, 4, 5, 6, 7, 10, 17, 26	

	PAGE
Revenue Act of 1932, Section 501	25, 29
Revenue Act of 1932, Section 506	5, 7, 9, 25
Revenue Act of 1932, Section 530	8, 25
Revenue Act of 1934, Section 506	5, 9
Revenue Act of 1935, Section 506	9
Rule 12(c) of New Rules of Civil Procedure for District Courts of the United States	4

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
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BRIEF FOR THE PETITIONER.

Opinions Below.

The opinion of the United States District Court for the Eastern District of New York (R. 175-181) is reported in 28 F. Supp. 322. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 194-198) is reported in 110 F. (2) 371.

Jurisdiction.

The judgment of the Circuit Court of Appeals reversing the District Court was entered on April 3, 1940 (R. 198). The petition for certiorari was filed May 21, 1940, and granted October 14, 1940 (R. 200). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

The sole question presented is the value for Federal gift tax purposes of nine single premium life insurance

policies—is it their cash surrender value, as contended by petitioner, or is it their cost, as contended by the respondent.

Statutes and Regulations Involved.

The applicable statutory provisions appear in the appendix, *infra*, pp.

Statement.

The pertinent facts alleged in the petitioner's complaint and admitted by the respondent's answer and the stipulation of facts are briefly as follows:

In December of 1934 the petitioner purchased nine single premium life insurance policies. In each of these policies the petitioner was named as the insured, all of the policies were payable to the petitioner's estate, and the petitioner reserved the right to change the beneficiary (R. 25, 27, 43, 45, 57, 59, 77, 81, 93, 95, 113, 115, 127, 133, 147, 151, 159, 161).

The policies and the dates of assignment⁽¹⁾ (R. 6, 17, 21) are as follows:

⁽¹⁾ It is to be noted that the date of Policy No. 1,225,190 of the Union Central Life Insurance Company is December 31, 1934 and that the date of the assignment is December 27, 1934 (R. 23, 93). Policies numbered 1,226,200 and 1,226,201 of the Union Central Life Insurance Company are dated December 31, 1934 but were not issued until January 7, 1935. The date of the assignments in each case is December 31, 1934 (R. 25, 91, 157, 159). Policy No. 9,687,735 of The Equitable Life Assurance Society bears a register date of December 27, 1934 (R. 143) was executed by the company on January 8, 1935 (R. 127) and assigned by the petitioner on December 27, 1934 (R. 123). The petitioner and the respondent have stipulated that all of these policies were assigned on December 31, 1934 with the exception of the Equitable Life Assurance Society policy which was assigned on December 27, 1934 (R. 21).

It is to be further noted that page 25 of the record should be substituted for page 159; page 159 should be substituted for page 93; and page 93 should be substituted for page 25. These errors occurred in the printing of the instant record.

Insurance Company	Number of Policy	Face Amount	Date of Policy	Cost	Date Assigned	Cash Surrender Value When Assigned	Assignee
Union Central Ins. Co. of N.Y.	1,225,190	\$130,000.	12/31/34	\$109,920.20	12/31/34	\$ 90,632.07	M. Robert Guggenheim
Connecticut General Ins. Co.	462,569	100,000.	12/27/34	77,784.00	12/27/34	65,283.02	M. Robert Guggenheim
New York Life Insurance Co.	12,486,936	100,000.	12/29/34	84,528.00	12/29/34	73,508.00	Gladys C. Strauss
National Insurance Co. of Vermont	632,645	100,000	12/27/34	86,550.00	12/27/34	74,150.94	Gladys C. Strauss
Union Central Insurance Co.	1,226,200	45,000.	12/31/34	38,049.30	12/31/34	31,372.64	Gladys C. Strauss
The Prudential Insurance Co. of America	8,740,620	100,000	12/27/34	84,886.00	12/27/34	71,980.68	Gladys C. Strauss
The Equitable Life Assur- ance Society of the United States	9,687,735	200,000.	12/27/34	170,778.00	12/27/34	146,446.72	Harry G. Guggenheim
The Mutual Life Insurance Company of New York	4,918,863	200,000.	12/27/34	169,208.00	12/27/34	146,541.50	Harry G. Guggenheim
Union Central Insurance Co.	1,226,201	25,000.	12/31/34	21,138.50	12/31/34	17,429.24	Harry G. Guggenheim
		<u>\$1,000,000.</u>		<u>\$842,842.00</u>		<u>\$717,344.81</u>	

On March 15, 1935, the petitioner filed a Federal gift tax return for the calendar year 1934, and at the same time paid a tax thereon in the amount of \$52,872.93 (R. 5, 17). In this gift tax return the petitioner, on the basis of Article 2 (5) of Regulations 79 (1933 Ed.), reported, as taxable gifts, the nine single premium life insurance policies in question. The total value of these policies was returned as \$717,344.81, which was the total of their admitted cash surrender value on the date they were irrevocably assigned (R. 6-7, 17, 21).

The Commissioner of Internal Revenue on August 3, 1936 determined that these policies should be valued not on the basis of their cash surrender values on the date they were irrevocably assigned to the named donees, but on the basis of their cost to the petitioner. The Commissioner's determination was based on Article 19 (9) of the 1936 Regulations. The total cost paid by the petitioner was \$842,842. On the basis of this determination the Commissioner of Internal Revenue, on January 11, 1937, assessed a deficiency in gift tax against the petitioner in the amount of \$13,804.69, plus interest thereon of \$1,450.05, which was paid by the petitioner to the respondent on January 25, 1937 (R. 7, 17-18).

On June 30, 1938, the petitioner filed with the respondent a claim for refund of the aforesaid assessment of \$13,804.69 and interest paid thereon in the amount of \$1,450.05. The Commissioner of Internal Revenue on October 6, 1938 denied this claim for refund in its entirety, and the petitioner thereupon filed suit in the United States District Court for the Eastern District of New York on November 9, 1938. On June 1, 1939, the petitioner filed a motion for judgment on the pleadings under Rule 12 (c) of the New Rules of Civil Procedure for District Courts of the United States (R. 3, 7-8, 10-14, 17).

The District Court granted the petitioner's motion for judgment on the pleadings and held that Article 2 (5) of Regulations 79, promulgated on October 30, 1933, set forth the rule that the cash surrender value of a single premium life insurance policy was the true measure of its value for

gift tax purposes. Further, the District Court held that in view of the reenactment by Congress in 1934 of Section 506 of the Revenue Act of 1932, it must be presumed that Congress had knowledge of the foregoing regulation promulgated in 1933 by the Treasury Department and thereby approved it. *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488; *National Lead Co. v. U. S.*, 252 U. S. 140, 146.

In 1936 the Treasury Department promulgated a new regulation (Article 19 (9) of Regulations 79) which defined the value of a single premium life insurance policy to be the amount paid to the company. The District Court ruled that the 1936 Regulation could not be applied retroactively to the instant gifts and stated:

"It is, of course, conceivable that a regulation promulgated by an executive branch of the Government may require correction, but where the Department has acted for years under an expressed interpretation and Congress implicitly has accepted such interpretation through re-enactment of the same statute, the new interpretation should not without a showing of Congressional authority have a retroactive effect. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110." (R. 178)

The District Court thereupon concluded that when the petitioner in 1934 acted within the provisions of the Treasury Regulations in effect at that time, she was acting within the law. "Application of the 1936 regulation would in effect attempt to destroy the legality of the plaintiff's act without warrant of law." (R. 179).

The Circuit Court reversed the District Court's determination and held that the value of a life insurance policy is the cost to duplicate the policy at the time of the gift.

With the exception of the Circuit Court below, the Circuit Court of Appeals for the First Circuit⁽²⁾, and the

NOTE:

⁽²⁾ *Comm. v. Powers*, not officially reported, 1940 Prentice-Hall Federal Tax Service, par. 62785, cert. granted Nov. 12, 1940.

District Court for the Northern District of Illinois, whose decision was reversed by the Circuit Court of Appeals for the Seventh Circuit⁽³⁾, every Court and every Board of Tax Appeals case⁽⁴⁾ has uniformly held that the 1933 Regulations, Article 2 (5) laid down the rule that cash surrender value was the value prescribed for valuing a single premium life insurance policy, and that single premium life insurance policies should be so valued.

Specification of Errors Urged

The United States Circuit Court of Appeals for the Second Circuit erred:

1. In holding that the Treasury Regulations 79 (Article 2 (5)) in effect in 1934 did not prescribe that cash surrender value be taken as the value of a gift of a single premium life insurance policy.

⁽³⁾ *Ryerson v. U. S.*, 28 F. Supp. 265, reversed 114 F. (2) 150, cert. granted Nov. 12, 1940.

⁽³⁾ *Comm. v. Haines*, 104 F. (2) 854 (C. C. A. 3); *Helvering v. Cronin*, 106 F. (2) 907 (C. C. A. 3); *Helvering v. Bryan*, 109 F. (2) 430 (C. C. A. 4); *U. S. v. Ryerson*, supra (C. C. A. 7) cert. granted Nov. 12, 1940; *Guggenheim v. Rasquin*, supra, (D. C. E. D. N. Y.).

⁽⁴⁾ *Charles Lockhart*, Memo B. T. A. June 30, 1938, petition for review dismissed by C. C. A. 3 on Sept. 15, 1939; *Henry W. Corning*, Memo B. T. A. Dec. 8, 1938; *Elizabeth S. Kirk*, 39 B. T. A. 902, appealed to C. C. A. 3; *Flora D. Sapplee*, Memo B. T. A. June 26, 1939, appealed to C. C. A. 3; *Louis Florsheim*, Memo B. T. A. Sept. 11, 1939, appealed to C. C. A. 7; *Edith W. Corning*, Memo B. T. A. Jan. 30, 1940, appealed to C. C. A. 6; *Bettie F. Kesner*, Memo B. T. A. Jan. 31, 1940, appealed to C. C. A. 7; *Samuel F. Houston*, Memo B. T. A. Mar. 5, 1940; *Firman V. Desloge*, Memo B. T. A. Mar. 18, 1940; *Estate of Waller C. Hardy*, Memo B. T. A. June 28, 1940. See also *Blaffer v. Comm.*, 103 F. (2) 489 (C. C. A. 5), and *Farish v. Comm.*, 103 F. (2) 1011 (C. C. A. 5).

2. In holding that the value for gift tax purposes of a gift of a single premium life insurance policy is not the cash surrender value of the policy when it is irrevocably assigned.

3. In holding that the value for gift tax purposes of a gift of a single premium life insurance policy is to be measured by the cost of the insurance.

Summary of Argument

The petitioner's tax liability for the year 1934 must be determined in accordance with the approved regulations then in effect, provided such regulations are a reasonable and consistent interpretation of Section 506 of the Revenue Act of 1932.

Article 19 (1) of Regulations 79 (1933 Ed.) in dealing with the valuation of property in general provides that the value of property for gift tax purposes shall be its fair market value, that is, the price at which property will change hands between a willing buyer and a willing seller, neither being under the compulsion to buy or to sell.

Article 2 (5) of Regulations 79 (1933 Ed.) lays down the rule that the fair market value of a single premium life insurance policy shall be its cash surrender value on the date of the gift.

Articles 19 (1) and 2 (5) of Regulations 79 (1933 Ed.) prescribe a rule which is a reasonable and consistent interpretation of Section 506 of the Revenue Act of 1932.

Congress gave to these Articles the force and effect of law by re-enacting without change Section 506 in the Revenue Acts of 1934 and 1935. Accordingly, Article 19 (9) of the 1936 Regulations cannot be applied retroactively. *Helvering v. R. J. Reynolds Tobacco Co., supra.*

POINT I.

The petitioner's liability for 1934 gift tax is to be determined by the approved regulations then in effect.

Section 501 of the Revenue Act of 1932 imposes a gift tax upon all transfers of property to the extent that they are donative in character and exceed the authorized deductions. Section 506 of this Act provides:

"If the gift is made in property, the value thereof at the date of the gift shall be the amount of the gift."

The word "value" is susceptible of many meanings. There is no fixed general rule of law which determines the valuation of property. The factors entering into the concept of value vary with types of property and with the purpose or use to be made of the valuation. Again, the relative weight to be attached to the different factors may vary. Accordingly, in view of the very general and indefinite standard fixed by Congress for the determination of the value of a gift of property, it became a practical necessity for the Commissioner of Internal Revenue to designate some test of value which could be used to fix the amount of the gift in terms of money.

On October 10, 1933, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated an administrative regulation, Regulations 79, in pursuance of authority vested in him by Section 530 of the Revenue Act of 1932. Article 19 (1) of these regulations deals with the valuation of property in general and provides as follows:

"Art. 19. *Valuation of property.*—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing

seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case."

Article 2 (5) of these regulations deals specifically with the valuation of life insurance policies, and provides as follows:

"The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy, without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."

Subsequently, the General Counsel of the Treasury Department issued a memorandum based on Article 2 (5) wherein examples illustrating the Bureau's interpretation of the valuation of life insurance contracts were set forth. G. C. M. 13147; C. B. June 1934, page 358. There is no evidence, or any reported case to indicate that prior to 1936 the Commission did not apply Article 2 (5) to the valuation of all life insurance policies including single premium policies.

The Revenue Act of 1934 was enacted on May 10, 1934, and Congress re-enacted Section 506 of the Revenue Act of 1932 without making any change therein. In the Revenue Act of 1935, Section 506 of the Revenue Act of 1932 was again re-enacted without change. Furthermore, Article 2 (5) remained unchanged in the 1934 and 1935 editions of Treasury Regulations 79.

In *Helvering v. Winmill*, 305 U. S. 79, 83, the Supreme Court stated that:

"Treasury regulations and interpretations long continued without substantial change, applying to

unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law."

To the same effect—*McCaughn v. Hershey Chocolate Co.*; *National Lead Co. v. United States*, supra. •

On February 26, 1936, the Treasury Department completely changed Article 2 (5) and provided therein *inter alia* "For the valuation of life insurance, see subdivision (9) of Article 19." Article 19 (9) of the 1936 edition of Regulations 79 provides:

"(9) *Life insurance and annuity contracts.* The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. * * *

Example: A donor owning a life insurance policy on which no further payments are to be made to the company. (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured."

The Government, subsequent to the promulgation of the 1936 Regulations, then took the position, which they have urged in this case, that Article 19 (9) 1936 Edition is to be applied retroactively, so as to repeal the rule of law, Article 2 (5) 1933 Edition, which existed during the period for which the instant tax is imposed. It is submitted, however, that Article 2 (5) had the approval of Congress by the re-enactment, without change, of Section 506 of the Revenue Act of 1932 in the Revenue Acts of 1934 and 1935. Article 2 (5) of the 1933 regulations therefore had the force and effect of law, and the petitioner's tax liability for the year 1934 must be determined in conformity to the Regulations then in force, provided, of

course; that those Regulations are a reasonable and consistent interpretation of Section 506. *Helvering v. R. J. Reynolds Co.*, supra.

In dealing with this precise question the Court of Appeals for the Third Circuit, in a case on all fours with the instant one stated in *Commissioner v. Haines*, supra, at page 855:

"In re-enacting section 506 of the Act in 1934 and 1935, Congress must be taken to have approved the Administrative construction thereof and to have given Article 2 (5) 'the force of law'. *Helvering v. R. J. Reynolds Company*, 59 S. Ct. 423, 426, 83 L. Ed., decided January 30, 1939. It was argued in that case that a subsequent amendment of the regulations must be applied retroactively, but the court refused to accept this argument and held that: 'Since the legislative approval of existing regulations by reenactment of the statutory provision to which they appertain gives such regulations the force of law, we think that Congress did not intend to authorize the Treasury to repeal the rule of law that existed during the period for which the tax is imposed.' The court further said: 'We hold that the respondent's tax liability for the year 1929 is to be determined in conformity to the regulation then in force.'

"This rule of law declared in that case is dispositive of the question here involved and the tax must be assessed on the cash surrender value of the policies at the time the gift was made in accordance with the regulations then in force."

To the same effect see *Helvering v. Cronin*; *U. S. v. Ryerson*, supra.

POINT II.

Article 2 (5) of Regulations 79 (1933 Ed.) prescribes the rule for valuing gifts of life insurance contracts.

The Government argued in the court below that the sole purpose of Article 2 (5) (1933 Ed.) is to give examples of what are taxable gifts and that the Treasury Department did not intend it to serve as a rule for valuing gifts. The Government argues that the valuation of gifts of property is specifically provided for by Article 19, which is entitled "Valuation of Property", and that Article 2 (5) should accordingly be disregarded.

Article 19 first lays down the rule for valuing property in general and then prescribes specific rules for the valuation of real estate, stocks and bonds, interests in business, notes, intangibles, annuities and tenancies by the entirety. No specific provision is set forth therein for valuing life insurance policies for the reason that it had already been covered in Article 2 (5), which states that "the irrevocable assignment of a life insurance policy constitutes a gift *in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.*" (Italics supplied.) The phrase "in the amount of" is also present in subdivisions (6) and (7) of Article 2.

When the Treasury Department amended the Regulations in 1936, it omitted from Article 2 (5) the phrase—"in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift", and added at the end of the Article the statement—"For the valuation of policies of life insurance, see subdivision (9) of Article 19". If Article 2 (5) as originally promulgated in 1933, was not intended by the Treasury Department to deal with the valuation of insurance policies, then, it may be asked, why the necessity for inserting the above clause directing one now to go to another section of the Regulations for the rules for valuation of life insurance contracts, and

why was the language dealing with such valuation omitted in Article 2 (5) as amended?

That the Treasury Department clearly intended Article 2 (5) of the 1933 Regulations to prescribe the rule for valuing life insurance policies is evidenced by its own published ruling, G. C. M. 13147, *supra*. This ruling specifically explains how Article 2 (5) (1933 Ed.) is to be applied in determining the valuation of gifts of life insurance policies and gives detailed examples of valuation thereunder.

The language of Article 2(5) is clear and is admirably chosen to cover the gift of every form of life insurance policy regardless of when made.

With reference to the time when the gift is made, it should be noted that the article refers not only to the irrevocable assignment but also to the naming of the beneficiary of a policy. The beneficiary of a policy is always named when the policy is taken out, so that it is clear that the article is intended to cover the gift of a policy at that time. It is also to be noted that the article uses the words "if any" with reference to cash surrender value, indicating an intention to cover the gift of a policy at the time it is taken out, since in the case of an annual premium policy the reserve during the first year is not sufficient to provide a cash surrender value.

The language of the article "a life insurance policy" indicates an intention to lay down a rule which would cover the valuation of every form of life insurance policy. In the case of an annual premium policy, in which part of each premium goes to build up the reserve (or cash surrender value) and part to protection during the year, the value at any time is represented by the cash surrender value, if any, plus the prepaid insurance adjusted to the date of gift. In the case of a single premium policy, in which a reserve for the full amount of the policy is set up in advance, the reserve covers the prepaid insurance and represents the entire value of the policy.

In *U. S. v. Ryerson, supra*, the Circuit Court of Appeals for the 7th Circuit, in answer to the Government's contention on this point, stated at page 153:

"We think it is apparent that the requirement of 'prepaid insurance' applies to policies upon which current premiums are still being paid. In the case of a fully paid insurance policy the cash surrender value reflects the increased value of the policy due to the fact that the insurance is fully paid up."

In G. C. M. 13147, *supra*, the General Counsel states that "It is to 'the net cash surrender value, if any,' that the addition of 'the prepaid insurance adjusted to the date of the gift' (article 2, Regulations 79) is to be made." The cash surrender value is therefore the starting point or basis for valuing life insurance policies, and only in the case of annual premium policies is that part of the premium payment, which is made before the gift and which represents the prepaid insurance, to be added to the cash surrender value. In the case of a single premium policy, the basis for valuation is its cash surrender value, which reflects the "prepaid insurance", or increased value of the policy due to the fact that the insurance is fully paid up.

Every life insurance policy is a contract on the part of the insurer to pay a fixed amount at a future date, the death of the insured. This date, while uncertain with respect to a single person, is by actuarial principles certain with respect to a large number of persons and represents the date of the expected death of each person insured. The purpose of the reserve on every insurance policy is to create a fund which at the rate of interest expected to be earned by the insurer will equal the face of the policy upon the expected death of the insured. In the case of an annual premium policy this reserve is accumulated by additions thereto from year to year, a part of each annual premium being applied to the reserve and a part to insurance or protection. In the case of a single premium policy the entire reserve is set up in the beginning in

an amount which at the rate of interest the company expects to realize upon its investments (3% to 3½% in the present instance) will equal the face of the policy at the expected date of death. The reserve on a single premium policy at all times represents the then "present value" of the face of the policy. The cash surrender value is the amount of the reserve less a small service charge for the expense of the company in connection with the surrender of the policy. For the purpose of this discussion, the terms "reserve" and "cash surrender value" are used interchangeably.

The cost of a single premium policy, however, is greater than the amount of the reserve by reason of the so-called load. Every insurance policy, in addition to the bare cost of insurance, carries a so-called load intended to cover the expense to the company in obtaining the insurance and the other expenses of operation applicable to such policy. In the case of annual premium insurance policies, these expenses are spread over the expected life of the policy and the load is included in each annual premium. In the case of a single premium policy the entire load has to be charged at the inception of the contract and is deducted from the amount of the premium in setting up the initial reserve. The expenses constituting the load on a single premium policy are charged by the company as soon as the policy is taken out and are not refundable to the insured or to any assignee of the policy. They do not enter into the reserve of the policy, which we have seen is its present value based upon actuarial computations, nor do they represent any value to the holder of the policy. They are therefore not to be taken into account in determining the fair market value of the policy.

With the exception of the Circuit Court below every Court and every Board of Tax Appeals decision on this question have uniformly held that cash surrender value alone was prescribed by Article 2 (5) as the value of a single premium policy. *Commissioner v. Haines*; *Helvering v.*

Cronin; Helvering v. Bryan; U. S. v. Ryerson, supra, and the following Memorandum Board of Tax Appeals decisions: *Charles Lockhart; Henry W. Corning; Elizabeth S. Kirk; Flora D. Supplee; Louis Florsheim; Edith W. Corning, Bettie F. Kesner, Samuel F. Houston; Firmin V. Desloge and Estate of Waller C. Hardy, supra*. The District Court for the Northern District of Illinois, in the case of *Ryerson v. U. S., supra*, held to the contrary but that decision was reversed on appeal to the Circuit Court of Appeals for the Seventh District. In *Powers v. Commissioner, supra*, which is the only other court decision in the Government's favor, the Circuit Court of Appeals for the First Circuit refused to apply Article 2 (5) on the theory that "it is not consistent with the language of the Act."

It is submitted that Article 2 (5) of Regulations 79 (1933 Ed.) prescribes the rule for valuing a gift of a life insurance policy and that in the case of a single premium life insurance policy, its value for gift tax purposes is its cash surrender value.

POINT III.

Article 2 (5) of Regulations 79 (1933 Ed.) is a reasonable and consistent interpretation of Section 506 of the Revenue Act of 1932.

The Circuit Court below held that "The gift tax . . . is measured by the value of the property given by him (the donor), not by the value of the property in the hands of the donee" (R. 196). It is submitted that this ruling is inconsistent with the gift tax act as interpreted by the Treasury Department in Regulations 79.

The Treasury Department has construed the word "value" as "fair market value," and defined "fair market value" as "the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell." It is evident,

therefore, that the basic theory of valuation adopted by the Treasury Department is what the property would sell for in the open market, and not a peculiar value that the property may have to the owner.

In dealing with life insurance policies, the Commissioner promulgated a rule in the 1933 edition of Regulations 79, Article 2 (5) which conformed to his theory of value as set forth in Article 19 (1). The 1936 rule, which the Circuit Court below adopted, is an unreasonable and inconsistent interpretation. Furthermore, the Treasury Department should not be permitted to adopt "fair market value" with respect to property in general, and a different value, cost to the owner, with respect to life insurance. The nature and express language of the statute requires that the word "value" have the same meaning for every type of property.

The particular policies of life insurance in question are to be valued—Article 19 (1). Under the Treasury Department's Regulations, what is the value at which these policies will change hands between a willing buyer and a willing seller?

In the Circuit Court's opinion, it is stated that:

"When the property given is a life insurance policy, the value is the amount that it would cost to duplicate the policy at the time of the gift. That is the value commonly recognized by the courts in actions for conversion of a policy, in actions for breach of contract to issue a paid-up policy, and in allowing claims against insolvent life insurance companies" (R. 195).

The inquiry in all of these cases was not directed to what the policies in question would change hands between a willing buyer and a willing seller, but to what was necessary to indemnify the plaintiff so that he would be in the same position as before the conversion or breach of contract occurred. Quite different is the situation where a policyholder voluntarily parts with his policy; in such a case he expects to, and does receive only its fair market value, its cash surrender value..

In *Speer v. Phoenix Mutual Life Insurance Company*, 36 Hun 322, 325, which involved an action to recover damages for breach of contract by the insurance company refusing to receive the premiums on a policy and continue it in force, it is stated;

“When the company broke this contract and the plaintiff decided to sue for damages instead of compelling the continuance of its contract, he was entitled to recover a sum that equalled the value to him of the policy; or, in other words, that would make good to him the loss he sustained by its breach.” (Italics supplied.)

The fundamental distinctions manifested by these decisions go to the very heart of the problem of valuation of insurance policies for gift tax purposes, yet the Circuit Court appears to have ignored them completely in deciding this case. The measures of value used in those cases may well be the most accurate measures where the question is one of indemnifying a particular plaintiff, but it is a very different thing to say that these are the most accurate—or even a reasonably accurate—measure of value where, as a matter of statutory construction, the value to be determined is what would be actually obtained for the issued policies in a willing buyer—willing seller market.

The market for insurance contracts is usually the companies who issued the policies or banks who will lend money on them. It cannot be suggested that banks will lend more than the cash surrender or loan value, yet that is what the Government would have us believe. In bankruptcy proceedings, it has long been the rule that a policy of insurance which is payable to the bankrupt's estate becomes an asset in the hands of the trustee in bankruptcy only to the extent of its cash surrender value on the date of the bankruptcy. Congress itself has approved cash surrender value as the best measure of value for purposes of the Bankruptcy Act. United States Code, Title 11, Section 110 a (5). The Interstate Commerce Commission has adopted cash sur-

surrender value as the soundest measure of value for purposes of the Uniform System of Accounts for carriers subject to the Motor Carrier Act, 1935, promulgated November 29, 1937 and effective January 1, 1938.

It is common knowledge that thousands of life insurance policies are surrendered to the companies each year, and the holders receive the cash surrender values. If these policies had an actual realizable value, or even some intrinsic value in excess of their cash surrender value, it is obvious that there would arise a business of purchasing such policies from people who would otherwise surrender them. Again, if the gift tax value, as contended by the Government, is the cost to duplicate the policy, then it would be logical to tax as gifts the difference between cost and cash surrender value on all policies which are surrendered.

Lucas v. Alexander, 279 U. S. 573, has been cited by the Government in support of its cost theory. In that case this Court had to determine the amount of capital gain for income tax purposes which was realized by a taxpayer who received at maturity the face amount of the policy, plus accumulated dividends. The policies involved had been taken out prior to 1913 and were of the so-called tontine type, on which benefits greatly in excess of the amount of the policy accrued to the holder if the policy was held until the end of the tontine period. There is no tontine feature in the instant policies.

This Court held that the value on March 1, 1913 was the policy reserve on that date, plus the proportion of the accumulated tontine dividends allocable to the policy on that date. The "value" to be determined was (p. 579):

"that part of the amount actually realized by the taxpayer which, by the use of appropriate accounting methods, can fairly be said to have accrued before March 1, 1913—its value then as compared with the value in fact later realized by the taxpayer taken as a standard."

On that basis it was not necessary for the Court to speculate. Due to the tontine feature of this policy it was necessary for this Court to begin with the fact of the amount actually received by the insured and work backwards.

The cash surrender values of the instant policies are their reserve values, less a small surrender charge, and the reserve value in all cases was computed on the American Experience Table of Mortality with interest at 3% or $3\frac{1}{2}\%$ (R. 29, 47, 63, 79, 97, 115, 135, 149, 163). The reserve is the face amount of the policy discounted at 3% or $3\frac{1}{2}\%$ on the basis of the petitioner's expected life. Since the cash surrender value and the reserve in these policies were practically the same, *Lucas v. Alexander, supra*, is, in effect, authority for the petitioner's contention. The small surrender charge, which is the difference between the reserve and the cash surrender value, represents no value to the holder of the policy and is not to be taken into account in determining the value for gift tax purposes.

The argument has been made that some life insurance contracts do not provide for cash surrender values until the end of the first year, and that if cash surrender value is supposed to be the correct value, then such policies can have no value during the first year. The First Circuit Court of Appeals took this position in the case of *Comm. v. Powers, supra*, but any such argument overlooks the fact that the valuation of such a contract is a commonplace problem, involving the factor of discount and the resulting commuted values. *Sinclair v. U. S.*, 252 U. S. 547; *Ithaca Trust Co. v. U. S.*, 279 U. S. 151. In the instant case the cash surrender values of the policies were furnished the petitioner by the companies who issued the policies and the correctness of these values was admitted by the Government in its answer and in the stipulation of facts (R. 17, 21). The valuations so determined are the actual values of the contracts on the date of the gift, and these valuations are based on the fact that the cash surrender values would not have been forthcoming from the insurance companies except in accordance with the terms of the contracts.

The relation of insurer and insured is solely one of contract and the contract has no existence apart from the agreement of the parties. In the case of insurance, the value at any time is not the result of the interplay of supply and demand, but of the mathematical computation of the then present value of the policy by the insurer, who, by its contract, binds itself to pay a fixed sum. A life insurance contract, therefore, can have no value greater than the insurer has bound itself to pay. There is no way that a holder of the instant policies might get more for them than through the surrender of them to the companies for their loan or cash surrender values, and the cash surrender values of the instant policies cover every element of value and include the investment feature of the policies as well as the protection features.

The Government has argued in these cases that cash surrender value is a compulsory liquidation price, and that the surrender of a policy is, in effect, a forced sale of property. It is true that situations may arise where policy owners are forced to convert their policies into cash, but it is also true that owners of Government bonds, stocks, and real estate, are forced to sell the same to obtain cash, and often at times when the market is low. It does not follow, that the price which the policy holder or the security owner receives is a "forced sale price" and less than the fair market value.

One of the principal selling points of any insurance company is that the company will pay a cash surrender value, and very few people would buy insurance policies if it meant that they could never exchange the policy for a cash sum that corresponded to the then value of what they had invested in the policy. The success of the insurance business is in itself a manifestation of the willingness on the part of the buyer that the exchange prices in the policies are a fair and accurate measure of what the policy is worth at the times stated. In this connection the District Court stated:

"Judicial notice may well be taken that cash surrender values as determined by insurance companies

are based upon strict actuarial computations; and there is no suggestion that in the open market a buyer could be found who would pay a greater sum for the policies than that which the insurance actuaries determine to be their cash surrender values. Certainly defendant's investigation into the accuracy of such calculations cannot compel a finding that the insurance companies should pay a greater cash surrender value than they stipulate to pay in the contracts of insurance". (R. 180)

In *Behrend v. Commissioner*, 23 B. T. A. 1037, 1041, one of the questions involved was the value of an insurance policy irrevocably assigned as a gift. In holding that the cash surrender value represents the amount of the gift as a charitable deduction for income tax purposes, the Board stated:

"****The cash surrender value of the policies on that date is based upon years of actuarial experience, and this value is a convenient, reasonable and proper measure of the amount of the contribution or gift which the petitioner made on that date."

It is to be noted that the Commissioner acquiesced in this decision—C. B. X-1, p. 5.

The true test of value is what these contracts can be sold for, not what it will cost to buy a new policy from the insurance company which chooses to make a service charge for issuing another. If a man gives his son \$1,000. to buy a car, the gift is \$1,000., for that is what was given. If he gives his son a car, or an insurance policy, they are the subjects of the gift. It is the issued policy or the purchased car which must be valued and what they are worth in the open market is the test to be applied.

It is submitted that a measure of value, which is prescribed by the Commissioner in his Regulations, will come within the standard fixed by the Act if it affords a reasonably accurate measure of the monetary value of the gift. Article 2(5) of Regulations 79 (1933 Ed.) prescribes a

reasonably accurate measure of value which is consistent with the statute and Article 19(1). The fact that some other measure of value, might have been a reasonable interpretation, or the fact that the regulation embodying the first test or measure of value might later be modified and still represent a valid exercise of power by the Commissioner, does not in any way vitiate the validity and the binding force of the first regulation during the period that it was officially recognized and enforced.

CONCLUSION.

The Circuit Court below erred in holding that the Treasury Regulations in effect in 1934 did not prescribe that cash surrender value be taken as the fair market value of a gift of a single premium life insurance policy, that cash surrender value is not the fair market value of a single premium life insurance policy, and that under the Gift Tax Act the value of such a policy in 1934 is to be measured by the cost to the owner. The judgment of the Circuit Court should be reversed and the judgment of the District Court reinstated.

Respectfully submitted,

PAUL B. BARRINGER, JR.

Of Counsel:

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December 16, 1940.

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APPENDIX.

Revenue Act of 1932; c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932, and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * * (U. S. C., Title 26, Sec. 1000.)

SEC. 506. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. (U. S. C., Title 26, Sec. 1005.)

SEC. 530. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title (U. S. C., Title 26, Sec. 1029).

Treasury Regulations 79, pertaining to the Revenue Act of 1932, promulgated October 30, 1933:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a

policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment is a gift in the amount thereof.

ART. 19. *Valuation of property*—(1) *General*—The statute provides that if the gift is made in property, the value thereof at the rate of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value as of the time of the gifts should be considered in every case.

Subdivisions (2) to (8), inclusive, of this article deal, respectively, with the valuation of real estate, stocks and bonds, interest in business; notes, secured and unsecured; intangibles; annuities, life, remainder, and reversionary interests; and tenancies by the entirety.

Treasury Regulations 79, relating to the Revenue Act of 1932, promulgated February 26, 1936:

ART. 2. *Transfers reached*.—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intan-

gible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

*ART. 19. Valuation of property.—(1) General.—*The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a

share or a bond. All relevant facts and elements of value as of the time of the gift should be considered.

(9) *Life insurance and annuity contracts.*—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

The examples given below, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

Example: A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity; the value of the gift is the cost of the contract.

Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified

amount on the life of a person of the age of the insured.

G. C. M. 13147. A ruling is requested as to the proper method of computing the value of a life insurance policy, for gift tax purposes, which was irrevocably assigned on April 1, 1933, without consideration.

Section 501 of the Revenue Act of 1932 imposes a tax upon all transfers of property by any individual after June 6, 1932, to the extent that they are donative in character and exceed the authorized deductions.

SEC. 506 OF THAT ACT PROVIDES THAT—

“If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.”

Article 2 of Regulations 79 reads in part as follows:

“The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. . . .”

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.”

A life insurance policy in the amount of \$100,000 taken out on January 1, 1928, was irrevocably assigned by the insured on April 1, 1933, without consideration. The annual premium of \$2,849 was payable in advance on January 1. The policy provides in part as follows:

“The cash surrender value shall be the reserve on the face of the policy at the end of the insurance

year or, in event of default, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any outstanding paid-up additions, under section 2, option (c), plus any dividends standing to the credit of the policy, under section 2, option (d), and less a surrender charge for the third to the ninth years, inclusive, of not more than $1\frac{1}{2}$ per cent of the face of the policy. Such reserve will be computed on the basis of the American Table of Mortality and interest at 3 per cent, and the amount of paid-up insurance under (2) and the term of the continued insurance and amount of pure endowment under (3) will be computed on the same basis at the attained age of the insured on the date of default.

"The values in the table opposite are computed in accordance with the above provisions, assuming that premiums have been paid in full when due for the number of years stated, that there is no indebtedness to the company, no outstanding paid-up additions, no dividends standing to the credit of the policy, and that no dividends have been applied on the accelerated endowment plan; the surrender charge, if any, has been deducted."

After the policy has been in force for a period of four years the cash surrender value for each \$1,000 of the face amount is \$46, and after the policy has been in force for a period of five years the cash surrender value for each \$1,000 of the face amount is \$63. All premiums were paid when due, no indebtedness was due the company by the holder prior to assignment, and there were no paid-up additions and no dividends standing to the credit of the policy.

It is to "the net cash surrender value, if any, that the addition of "the prepaid insurance adjusted to the date of the gift" (article 2, Regulations 79

is to be made. The word "prepaid," meaning in advance or beforehand, obviously refers to a payment antedating the making of the gift. Fundamentally, life insurance, like other insurance, is simply a contract. By paying premiums the insured obtains the promise of the insurer to pay money on the former's death, or before that event. As such promise by the insurer is "insurance," and is bought by the premium payments, the two words, "prepaid insurance," manifestly mean a *premium payment* made before the gift to obtain the promise of the insurer. That promise may be to pay a sum in cash on surrender of the policy contract, or if not surrendered, to pay the face of the policy on the insured's death. Whatever the terms of the promise, the obtaining or purchasing thereof is through *premium payments*.

The following examples illustrate the Bureau's interpretation of the meaning of the concluding clause of subdivision (5) of article 2, Regulations 79, reading—"plus the prepaid insurance adjusted to the date of the gift";

1. In a case where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, and where such value was increased to \$6,300 immediately upon the payment on January 1, 1933, of the \$2,849 premium due for the insurance year 1933, the amount of the gift on April 1, 1933, the date on which the policy was irrevocably assigned was \$6,300, representing the cash surrender value of the policy, plus \$861.75, representing the prepaid insurance adjusted to the date of the gift. (Premium paid January 1, 1933, \$2,849 less \$1,700, the additional cash surrender value created by the payment of such premium, and less \$287.25, representing the earned premium from January 1 to April 1, 1933; $\$2,849 - \$1,700 = \$1,149 - \$287.25 = \$861.75$.)

2. In a case where the premium was duly paid for the insurance year 1933, where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, where the cash surrender value was increased to \$6,300 at the end of the insurance year 1933, and where the cash surrender value of \$6,300 was adjustable to the date of surrender of the policy, the amount of the gift on April 1, 1933, the date on which the policy was irrevocably assigned, was \$5,025 (representing the cash surrender value adjusted to April 1, 1933), plus the present worth of \$1,275 (the balance added to the cash surrender value at the end of the insurance year 1933), plus \$861.75, representing the unearned premium adjusted to the date of the gift and computed in the manner set forth in example 1.

3. In a case where the \$2,849 premium was duly paid for the insurance year 1933, where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, where that value was increased to \$6,300 at the end of the insurance year 1933, and where the cash surrender value of \$6,300 was not adjustable to the date of surrender of the policy, the value of the gift on April 1, 1933, the date on which the policy was irrevocably assigned, was \$4,600 (representing the cash surrender value of the policy), plus the present worth of \$1,700, the amount added to the cash surrender value at the end of the insurance year 1933, plus \$861.75, representing the unearned premium adjusted to the date of the gift and computed in the manner set forth in example 1.

In view of the foregoing, it is held that, where the insured makes a gift of the insurance to another, the insured having theretofore paid a premium in purchase of the insurer's promise, which promise covers a period not yet elapsed when the gift is made, the value of the gift includes (as illustrated in the fore-

going examples) the net cash surrender value of the policy at the date of the gift and that proportionate part of the premium paid before the gift, which covers a period extending beyond the gift. When the premium payment purchases the right to an increased cash surrender value, which is not available until the end of the policy year, a discount is required in arriving at its present worth as of the date of the gift. [G.C.M. 13147; C.B. June 1934, p. 358.]

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 92

FLORENCE GUGGENHEIM,

Petitioner,

v.

ALMON Q. RASQUIN, individually and as United States Collector of
Internal Revenue for the First District of New York,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF, FOR THE PETITIONER.

PAUL B. BARRINGER, JR.,

Attorney for Petitioner.

Of Counsel:

JOHN G. JACKSON, JR.

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TABLE OF CASES.

	PAGE
<i>Behrend v. Commissioner</i> , 23 B. T. A. 1037.....	4
<i>Estate of Louisa Morris Carroll</i> , 29 B. T. A. 11.....	4
<hr/>	
Revenue Act of 1926, Section 1108(a)	3
Revenue Act of 1932, Section 506	5
Revenue Acts of 1934 and 1935, Section 506	5
Regulations of 1933 and 1936—Article 19(1)	5

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No. 92.

IN THE

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OCTOBER TERM, 1940.

FLORENCE GUGGENHEIM,
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v.

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as United States Collector of Internal Revenue for the First District
of New York.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF FOR THE PETITIONER.

This brief is filed pursuant to permission granted by the
Court on January 7, 1941.

Respondent states, on page 10 of his brief, that:

"The value of all the rights which together constitute the life-insurance policy should not be telescoped into the value of the single right to receive a predetermined amount upon surrender."

These rights are stated to be the right to retain the policy as an existing contract and to enjoy its investment feature, the right to receive the face amount of the policy upon the

insured's death, and in some instances, the rights of optional modes of settlement.

The optional modes of settlement are merely methods of paying the face amount of the policy at the death of the insured other than by a straight payment of the face amount. Typical options are monthly instalments for a definite number of years, continuous instalments, fixed income, etc. (R. 31, 47, 61, 83, 99, 117, 137, 151, 165.) These rights are therefore no more than the right to receive the face amount of the policy on the death of the insured.

It is submitted that the right to enjoy the investment feature, the right to borrow, and the right to receive the face amount of the policy on the death of the insured are all contained and reflected in the cash surrender value. *The cash surrender value is the present cash equivalent of all of the rights and benefits available to the holder of the policy. The cash surrender value will increase in amount and reflect the increase in value of the policy in proportion to the length of time the policy is held.* In other words, the cash surrender value at any given date represents the face amount of the policy and all of the rights and benefits incident to the ownership of the policy discounted on the basis of the insured's life expectancy.

When one purchases a single premium life insurance policy from an insurance company, he pays a certain price. This price is greater than the policy's cash surrender value, and the difference is the expense incident to the issuance of the policy. This expense unquestionably has some intrinsic value to the insured for otherwise he would not have purchased the policy. This expense, however, does not go to increase the fair market or asset value of the policy which is the value to be determined under Regulations 79.

When the policy is assigned as a gift, this expense or intrinsic value is lost to the insured and not received by the assignee. The assignment is a new and separate transaction, unrelated to the original purchase, and the issued policy is what then must be valued. What is it worth in a

willings buyer-willing seller market? It is submitted that it cannot be worth more than its cash surrender value, for if it was, a business would have arisen of purchasing issued life insurance policies at a price in excess of their cash surrender values.

The cash surrender value is the minimum and the maximum amount which the holder of a policy can obtain for a policy in the insurance market. As stated by the District Court, (R. 180):

"Judicial notice may well be taken that cash surrender values as determined by insurance companies are based upon strict actuarial computations; and there is no suggestion that in the open market a buyer could be found who would pay a greater sum for the policies than that which the insurance actuaries determine to be their cash surrender values."

Respondent states, on page 11 of his brief, that the cash surrender value is fixed by insurance companies to discourage surrender of policies. It is submitted that this cannot be the case, in view of the strict actuarial computations, and secondly, because there is strong competition between insurance companies to fix the cash surrender values of their policies as high as can be justified, in order to render their policies more attractive to potential purchasers. The same forces of competition which determine the market price in the case of property in general operate to determine the surrender value in the case of insurance policies. This is particularly true of single premium policies, where the policies are so nearly alike that the one carrying the highest surrender value will be the one that is the easiest to sell.

The respondent has argued that the history of Section 1108(a) of the Revenue Act of 1926 plainly shows that Congress intended the Treasury to have full and complete discretion to determine to what extent changes in the regulations are to operate retro-actively. It is submitted, as

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evidenced by the legislative history and by the reports of the Conference Committee and the House, Ways and Means Committee, (respondent's brief, pages 29-31), that the intention of Congress was to give the Treasury more discretion to apply regulations prospectively only. As stated by the Conference Committee (respondent's brief, page 29, footnote 6):

"It is hoped that this provision will prevent the constant reopening of cases on account of changes in regulations or Treasury decisions, and it is believed that *sound administration properly places upon the Government the responsibility and burden of interpreting the law and of prescribing regulations upon which the taxpayers may rely*; * * *"
(Italics supplied.)

The respondent states, on page 21 of his brief, that the Treasury, at the time of the 1936 regulations, "had had no experience with gifts of single-premium insurance policies simultaneously with their issuance and the regulations accordingly did not attempt to provide specially for such a combination of transactions." It is submitted that it is not only difficult to believe this statement, but also that there is nothing in the record to substantiate any such statement.

As stated in petitioner's brief, pages 18 and 19, Congress itself has approved cash surrender value as the best measure of value for purposes of the Bankruptcy Act. The Interstate Commerce Commission has adopted cash surrender value as reflecting the true asset value of insurance policies for purposes of the Uniform System of Accounts for carriers subject to the Motor Carrier Act.

The Commissioner of Internal Revenue was successful in contending, in *Behrend v. Commissioner*, 23 B. T. A. 1037, that the cash surrender value represents the amount of a gift of a life insurance policy as a charitable deduction for income tax purposes. The Commissioner successfully contended in *Estate of Louisa Morris Carroll*, 29 B. T. A. 11,

that the cash surrender value of life insurance issued on the husband's life and payable to his estate falls into the estate of the marital community under the law of Louisiana, and that one-half of such cash surrender value should be included in the estate of the deceased wife for Federal estate tax purposes.

All of the foregoing values were based upon fair market value, and not upon the particular intrinsic value the policy may have to the insured. The cost to duplicate a policy or to indemnify an insured is not a true test of fair market value. It is submitted that the Commissioner's regulation, as amended in 1936, is not only an unreasonable and inconsistent interpretation of Section 506 of the Revenue Act of 1932, but is also inconsistent with Article 19(1) of both the 1933 and the 1936 Regulations. Cash surrender value, on the other hand, is a reasonable and accurate measure of the fair market value of a single premium life insurance policy, it is consistent with Article 19(1) of Regulations 79, and it has been approved by Congress reenacting Section 506 in the Revenue Acts of 1934 and 1935.

Respectfully submitted,

PAUL B. BARRINGER, JR.,
Attorney for Petitioner.

JOHN G. JACKSON, JR.,
Of Counsel.

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CHARLES ELMORE BOILEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1940

No. 92

FLORENCE GUGGENHEIM,

Petitioner,

v.

ALMON Q. RASQUIN, individually and as United States Collector of
Internal Revenue for the First District of New York,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

**SUGGESTION OF DEATH OF RESPONDENT MOTION TO
SUBSTITUTE ADMINSTRATRIX**

PAUL B. BARRINGER, JR.,

Attorney for Petitioner.

Of Counsel:

JOHN G. JACKSON, JR.

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IN THE
Supreme Court of the United States,
OCTOBER TERM 1940.

No. 92

FLORENCE GUGGENHEIM,

Petitioner,

v.

**ALMON Q. RASQUIN, individually and as United States
Collector of Internal Revenue for the First District of
New York,**

Respondent.

ON WRIT OF CERTIORARI TO THE THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

**SUGGESTION OF DEATH OF RESPONDENT MOTION TO
SUBSTITUTE ADMINISTRATRIX.**

Now COMES the petitioner in the above entitled cause
and states to the Court as follows:

That the respondent Almon Q. Rasquin died on Novem-
ber 4, 1940, at Riverhead, New York;

That Martha E. Rasquin has been appointed as Admin-
istratrix of the Estate of Almon Q. Rasquin, deceased.

WHEREFORE the petitioner moves the Court to make an
order directing that Martha E. Rasquin, as Administratrix
of the Estate of Almon Q. Rasquin, deceased, be substituted
for Almon Q. Rasquin as respondent.

Dated, January 4, 1941:

PAUL B. BARRINGER, JR.,
Attorney for Petitioner.

Of Counsel:

JOHN G. JACKSON, JR.

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No. 22

In the Supreme Court of the United States

Argued March 1960

PLANNING COMMISSION, PETITIONER

**ALMON C. BARKER, INDIVIDUALLY AND AS UNITED
STATES GOVERNMENT ATTORNEY GENERAL FOR THE
EAST DISTRICT OF NEW YORK**

**ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT**

REPLY TO THE PETITION

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 92

FLORENCE GUGGENHEIM, PETITIONER

v.

ALMON Q. RASQUIN, INDIVIDUALLY AND AS UNITED
STATES COLLECTOR OF INTERNAL REVENUE FOR THE
FIRST DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

Although we believe that the decision below is correct, we do not oppose the petition in view of the conflict with decisions in three other circuits¹ which the court below recognized (R. 197-198). Moreover, the same question is involved in a number of other cases now pending, and it is important administratively that the question be settled.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

JUNE 1940.

¹ *Commissioner v. Haines*, 104 F. (2d) 854 (C. C. A. 3rd); *Helvering v. Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Helvering v. Bryan*, 109 F. (2d) 430 (C. C. A. 4th).

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NO. 102

Supreme Court of the United States

October Term, 1940

FLORENCE SUGARMAN, PETITIONER

vs.
JAMES C. HANCOCK, INDIVIDUALLY AND AS UNITED
STATES COMMISSIONER OF INTERNAL REVENUE FOR
THE FIRST DISTRICT OF NEW YORK.

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

PRINTED FOR THE RESPONDENT

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INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statutes and regulations involved.....	2
Statement.....	2
Summary of argument.....	3
Argument:	
The donor is taxable upon the full amount that she paid for the policies given away by her:	
A. Article 19 (9) of Regulations 79 (1936 Ed.) covers this very case and is conclusive.....	6
B. The application of Article 19 (9) of Regulations 79 (1936 Ed.) is not prevented by the prior edition of Regulations 79.....	14
Conclusion.....	35
Appendix.....	36

CITATIONS

Cases:

<i>Bass v. Annuity Association</i> , 96 Kan. 205.....	14
<i>Cohan v. Commissioner</i> , 39 F. (2d) 540.....	34
<i>Commissioner v. Haines</i> , 104 F. (2d) 854.....	17, 18
<i>Commissioner v. Powers</i> , decided July 16, 1940, now pend- ing before this Court, No. 486, present Term.....	14, 17
<i>Ebert v. Mutual Reserve Fund Life Assn.</i> , 81 Minn. 116.....	14
<i>Graham & Foster v. Goodcell</i> , 282 U. S. 409.....	33
<i>Hecht v. Malley</i> , 265 U. S. 144.....	33
<i>Helvering v. Bryan</i> , 109 F. (2d) 430.....	17
<i>Helvering v. Cronin</i> , 106 F. (2d) 907.....	17
<i>Helvering v. Hallock</i> , 309 U. S. 106.....	18
<i>Helvering v. Reynolds Tobacco Co.</i> , 306 U. S. 110.....	6, 18, 32, 33, 34
<i>Helvering v. Wilshire Oil Co.</i> , 308 U. S. 90.....	9
<i>Los Angeles Gas Co. v. R. R. Comm'n</i> , 289 U. S. 287.....	12
<i>Lucas v. Alexander</i> , 279 U. S. 573.....	10
<i>Manhattan Co. v. Commissioner</i> , 297 U. S. 129.....	26
<i>Milliken v. United States</i> , 283 U. S. 15.....	33
<i>Morrissey v. Commissioner</i> , 296 U. S. 344.....	26
<i>Murphy Oil Co. v. Burnet</i> , 287 U. S. 299.....	26
<i>New York Life Ins. Co. v. Statham</i> , 93 U. S. 24.....	14

tion for a writ of certiorari was filed on May 21, 1940, and granted on October 14, 1940. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where single-premium policies of life insurance are irrevocably assigned simultaneously with issuance, is the value thereof for gift-tax purposes the cost to the donor or the cash-surrender value of the policies in the hands of the donees immediately after issuance?

STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and regulations involved appear in the Appendix, *infra*, pp. 36-45.

STATEMENT

This suit was brought by petitioner against the Collector of Internal Revenue to recover gift taxes paid by her. Upon a motion for judgment on the pleadings (R. 174), the District Court, pursuant to Rule 12 (c) of the Rules of Civil Procedure, entered judgment in favor of petitioner (R. 182, 183-184). The facts disclosed by the pleadings may be summarized as follows:

The petitioner, at the end of December 1934, then 71 years of age, purchased nine single premium policies of insurance upon her own life, and simultaneously made irrevocable gifts thereof to

three of her children. The policies were in the aggregate face amount of \$1,000,000, and petitioner paid an aggregate premium of \$852,438.50 therefor (R. 6-14, 17, 23-173). The petitioner treated the policies as having a cash-surrender value of \$717,344.81 at the time of gift, and filed a gift-tax return listing the policies upon the basis of their alleged cash-surrender value (R. 6-7).

The Commissioner of Internal Revenue determined that the "value" of the policies for gift-tax purposes was \$852,438.50 rather than their cash-surrender value, and accordingly assessed a deficiency of \$13,804.69 (R. 7). Petitioner paid the deficiency and brought this suit for refund.

The District Court's decision in granting petitioner's motion for judgment (R. 175-181) was reversed by the Circuit Court of Appeals (R. 194-198).

SUMMARY OF ARGUMENT

1. The statute provides in general terms that the tax shall be based on the "value" of the gift. However, the Commissioner is authorized to issue regulations to implement the statute, and under that authority the Treasury in 1936 issued regulations which precisely apply to this case. Under such regulations the value to be determined in this case is "the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured." Article 19.(9), Treasury Regula-

tions 79 (1936 Ed.), Appendix, *infra*, p. 37. We submit that this is a reasonable method of determining the value and is a permissible interpretation of the statute.

The cash-surrender value is an artificial amount, generally designed to discourage surrender of policies, and is comparable to what might be realized at a forced sale. The Commissioner therefore correctly rejected cash-surrender value as the measure of the tax.

The question of "value" arises here in the interpretation of a statute which imposes a tax upon the passing of money or property *from* the donor, and in the circumstances it is particularly appropriate to construe the statute so as to reach the full amount which the taxpayer has donatively expended.

Moreover, the owner of a fully paid life insurance policy possesses not only the right to surrender it at any time for its cash surrender value, but has the right to retain the policy as an existing contract and to enjoy its investment feature, the right to receive the face amount of the policy upon the insured's death, and in some instances the right to optional modes of settlement. The intent of the gift tax statute is not met unless all these economic benefits are reflected in the total taxable value of the policy. The value of all the rights which together constitute the life insurance policy, should not be telescoped into the value of the single right

to receive a predetermined amount upon surrender.

2. The application of Article 19 (9) of Regulations 79 (1936 ed.) is not prevented by the prior edition of Regulations 79 which had been promulgated less than two and one-half years earlier in 1933. The new edition applies to all gifts made after June 6, 1932, the date of enactment of the Revenue Act of 1932 which imposes the tax in question. See Section 1108 (a) of the Revenue Act of 1926, as amended by Section 506 of the Revenue Act of 1934.

Moreover, the 1933 edition of the Regulations did not deal with gifts of single premium policies at all, and the 1936 edition for the first time prescribed the formula to be employed with respect to such policies. The 1933 Regulations, relied upon by petitioner, dealt only with annual premium and similar types of policies, and the Treasury never understood those regulations as spelling out the rule for such policies as are here involved. And when the Treasury became aware of the problem presented by such policies, it promptly issued the new regulations. But even if the formula in the old regulations is applied literally to such policies, the result will be the same as that reached under the later edition of the regulations. However, the circuitous computations necessitated in applying the old formula to this kind of policy confirms the argument that it was never designed to cover such single premium policies.

But, in any event, even if the 1933 Regulations originally did support petitioner's position, it was within the power of the Commissioner to replace them with the 1936 Regulations. Section 1108 (a) of the 1926 Act, as amended by Section 506 of the 1934 Act, makes it abundantly clear that the Commissioner and the Secretary of the Treasury have plenary power to determine whether and to what extent a new regulation will apply with or without retroactive effect. Those provisions are rich in legislative history which discloses the full extent of the discretion committed to the Treasury.

Helvering v. Reynolds Tobacco Co., 306 U.S. 110, which denies the power of the Treasury to apply new regulations retroactively, is distinguishable in several respects, but in any event, for reasons set forth in detail hereinafter, we believe that it was incorrectly decided and respectfully submit that it should be overruled.

ARGUMENT

THE DONOR IS TAXABLE UPON THE FULL AMOUNT THAT SHE PAID FOR THE POLICIES GIVEN AWAY BY HER

A. ARTICLE 19 (9) OF REGULATIONS 79 (1936 ED.) COVERS THIS VERY CASE AND IS CONCLUSIVE

Late in December 1934 the taxpayer, then 71 years of age, purchased nine single-premium policies of insurance upon her own life. and at the same time made irrevocable gifts of those policies. The

policies were in the aggregate face amount of \$1,000,000, and petitioner paid \$852,438.50 therefor. The court below treated the policies as having a cash surrender value of \$717,344.81 at the time of gift¹ (R. 195), but held that the gift tax was to be measured by the amount which the donor paid for the policies rather than their cash surrender value.

Section 506 of the Revenue Act of 1932 (Appendix, *infra*, p. 36) requires that if a gift is made in property, "the value thereof * * * shall be considered the amount of the gift." And the sole

¹ However, the policies themselves are in the record and affirmatively show that no one of them had a cash surrender value until the expiration of one year. (R. 29, 47, 63, 79, 97, 115, 135, 149, and 163.) It is true that paragraphs V, VI, and VII of the bill of complaint (R. 6) allege that petitioner's gift tax return reported gifts of policies "having a * * * cash surrender value on the date of the gift of \$-----," and the Government admitted the allegations of those paragraphs (R. 17). But it should be observed that those allegations simply state what petitioner reported in her returns, and the Government's answer simply admits that such facts were reported by petitioner. The answer does not admit the truth of those facts. Whether the stipulation (R. 21) was intended to concede that the policies had a cash surrender value at the date of gift, or was intended simply to identify each individual policy with the amount petitioner treated as taxable and described as "cash surrender value," is at least conjectural.

For convenience, this brief will treat the policies as having a cash surrender value of \$717,344.81 at the date of gift, although we believe that the policies themselves forbid any such assumption, and we do not concede that the policies had any cash surrender value on the date of gift.

question here presented is whether "the value" of the insurance policies is the amount paid therefor by the donor (\$852,438.50) or the amount of the cash surrender value (\$717,344.81).

1. At the threshold of the inquiry it appears that Article 19 (9) of Treasury Regulations 79.(1936 Ed.) in terms governs this very case. Article 19 is headed "Valuation of property" and subdivision (9) of that article provides:

The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts.

And subdivision (9) contains an example which applies precisely to this case:

Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

These regulations were issued under Section 530 (Appendix, *infra*, p. 36), which authorizes the Commissioner and the Secretary of the Treasury to promulgate regulations to implement the statute.

Gifts of life-insurance policies made after June 6, 1932, are specifically stated to be subject to tax by Article 2 (5), and that article in turn makes reference to Article 19 (9) for the valuation of such policies.

In this situation the Court is not confronted with the broad question as to what is the correct formula for determining the "value * * * at the date of the gift" of single premium life-insurance policies. Rather, the question is simply whether the formula prescribed in Article 19 (9) is within the power of the Commissioner under the statute. It is certainly applicable to this case, and unless it was beyond the power of the Commissioner, it should have the same force as a formula specifically prescribed by Congress. See *Helvering v. Wilshire Oil Co.*, 308 U. S. 90, 102; *Simpson v. United States*, 252 U. S. 547, 549, 550.

"2. Since the statute merely speaks in general terms about "value", it was appropriate for the Commissioner to construe it as he did, having due regard for "the nature and purpose of the statute" involved. Cf. *Ray Copper Co. v. United States*, 268 U. S. 373, 377. That the interpretation adopted by the Commissioner in Article 19 (9) was well within the area of discretion is, we submit, beyond serious question.

At the very outset it should be recognized that the word "value" is to be construed, not *in vacuo*, but in connection with a statute imposing a tax

upon gifts. It is a tax imposed upon the donor, and, like the cognate estate tax, is measured by the amount of money or property passing *from* the transferor. The amount which the donee could immediately realize upon the gift by what is essentially a forced sale, is hardly the criterion which best evidences the value of the property passing from the donor. In the circumstances, it would be strange, indeed, to learn that one who had donatively expended \$852,438.50, had made a taxable gift of only \$717,344.81.

The owner of a fully paid life-insurance policy, whether donor or donee, possesses not only the right to surrender it at any time for its cash surrender value, but he has the right to retain the policy as an existing contract and to enjoy its investment feature, the right to receive the face amount of the policy upon the insured's death, and in some instances the right to optional modes of settlement. The intent of the gift-tax statute is not met unless all these economic benefits are reflected in the total taxable value of the policy. The value of all the rights which together constitute the life-insurance policy should not be telescoped into the value of the single right to receive a predetermined amount upon surrender.

This Court has recognized that the surrender of a policy to an insurance company amounts to a forced liquidation. *Lucas v. Alexander*, 279 U. S. 573. The cash surrender value is fixed in advance by insurance companies and is designed to dis-

courage surrender of policies. See Vance, *Insurance*, 2d Ed. (1930), pp. 55, 56. It is at most only one element that might be taken into account in determining value. Some policies may not have any cash surrender value, or may have a cash surrender value only at the end of a specified period. See footnote 1, *supra*. Can it be said that such policies have no "value" and that a gift thereof is exempt from tax?

Moreover, the cash surrender value reflects only the net reserve. But it is well known that the cost of a policy in the open market is much more: the insurance company must include in the price (premium) not only an item to go into the life reserves, but it must add various loading charges such as agents' commissions, cost of operation, etc. All such items are constituent elements that go to make up the final premium—i. e., the price at which one may purchase a life insurance policy in the open market. The mere fact that the purchaser cannot resell the policy to the issuing company at the full price should not obscure the situation. Thus, the purchaser of an automobile probably cannot resell it to the dealer at the price paid by him, even though he has not yet taken delivery. For, in the sales price were probably included such charges as salesman's commissions, etc., on which the dealer would be out of pocket were he to return the entire purchase price to his customer. Yet it seems quite plain that the purchase price of such an automobile would probably

be its 'value' for the purpose of the gift tax statute.

The donor, after all, made gifts of insurance policies, not of cash in the amount of the surrender values. If a gift of cash for immediate use were intended, it would be incongruous indeed for the donor to dilute the gift by making it in the form of an insurance policy. Since petitioner deliberately elected not to make the gifts in cash, there is no sufficient reason why the taxing authorities should be limited to the artificial value of the present right to surrender and cancel the contracts. That was only one of the bundle of rights represented by the contract.

Insurance policies, particularly of the type involved herein, are property of a unique character and their value cannot be ascertained by the use of methods for valuing more conventional property. Where, as here, the property to be valued is not ordinarily the subject of barter and sale, this Court has recognized that "the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available," and that the value of the property must be determined "under these inescapable limitations." *Los Angeles Gas Co. v. R. R. Comm'n*, 289 U. S. 287, 305. Although it may be that insurance policies are frequently employed as collateral for loans, there is not, so far as we are aware, any market for selling insurance policies already issued. And the mere fact

that petitioner might have been able to sell the policies to a stranger at their cash surrender value certainly does not establish a value for these policies. Petitioner paid approximately \$850,000 for the policies, and intended to make gifts that would ultimately produce \$1,000,000. It was, of course, contemplated by petitioner that the insurance contracts would be kept alive and would serve the purpose for which they were purchased. This Court has pointed out that "an important element in the value" of property "is the use to which it may be put." *Susquehanna Co. v. Tax Comm.* (No. 1), 283 U. S. 291, 296.

No argument is needed to demonstrate that the insurance company would not have been able to sell such policies at all if the entire value of the contracts consisted merely of the right to cash them immediately for some \$135,000 less than their cost. Petitioner obviously invested in and gave to her children contracts which had a value over and above the amounts for which they could be at once liquidated. They were worth the cost of duplicating them on the gift date. In this case that is precisely what petitioner paid for them, and we submit that the court below correctly ruled that the value of the policies was their cost. The same conclusion was reached in *Commissioner v. Powers* (C. C. A. 1st);² which is to be heard immediately following

² Decided July 16, 1940, not yet officially reported.

this case (*Madeleine D. Powers v. Commissioner*, No. 486, present Term).

This method of valuation finds support in cases dealing with valuation of policies in actions for conversion, for breach of contract to issue a paid-up policy, and in allowing claims against insolvent life insurance companies. *New York Life Ins. Co. v. Statham*, 93 U. S. 24; *Bass v. Annuity Association*, 96 Kan. 205; *Ebert v. Mutual Reserve Fund Life Assn.*, 81 Minn. 116; *People v. Security Life Ins. and Annuity Co.*, 78 N. Y. 114; *Toplitz v. Bauer*, 161 N. Y. 325; *Speer v. Phoenix Mutual Life Ins. Co.*, 36 Hun (N. Y.) 322; *Universal Life Ins. Co. v. Binford*, 76 Va. 103.

Accordingly, it is abundantly clear that the formula prescribed by Article 19 (9) is not only correct on principle but is entirely consistent with the statute. It is applicable to this case and should be controlling. *Only by declaring the regulation beyond the competence of the Commissioner can any other result be reached.* And we respectfully submit that not only was it well within the area of discretion accorded to the Commissioner but it is doubtful whether any other formula would be valid for such policies as are here involved.

B. THE APPLICATION OF ARTICLE 19 (9) OF REGULATIONS 79 (1936 ED.) IS NOT PREVENTED BY THE PRIOR EDITION OF REGULATIONS 79.

The gift tax provisions of the revenue law were enacted in the Revenue Act of 1932, and although

some of the provisions have from time to time been amended or modified, the Revenue Act of 1932 continues to be the operative gift tax statute.² Unlike the income tax law, there has been no reenactment of the gift tax statute. The first regulations promulgated under the gift tax provisions of the 1932 Act appeared on October 30, 1933, and were designated Regulations 79. Less than two and one-half years later, a second edition of Regulations 79 was issued on February 26, 1936.

The provisions relied upon by the Government in the foregoing part of this brief are found in the 1936 edition. The 1933 edition contained no provisions comparable to those upon which we rely in Article 19 (9) of the 1936 edition. However, it is perfectly plain that the 1936 edition was intended to supersede the 1933 edition and was intended to be applicable to all gift tax matters under the 1932 Act. See p. 9, *supra*. And if any doubt existed at all as to the applicability of the 1936 edition, that doubt is completely dispelled by Section 506 of the Revenue Act of 1934 (c. 277, 48 Stat. 680) which amended Section 1108 (a) of the Revenue Act of 1926 in the following terms:

**SEC. 506. RETROACTIVITY OF REGULATIONS,
RULINGS, ETC.**

² The only other gift tax statute ever enacted by Congress was contained in the Revenue Act of 1924 (c. 234, 43 Stat. 253), but was abandoned less than two years later in the Revenue Act of 1926 (c. 27, 44 Stat. 9). See Secs. 319-324 of the 1924 Act and Sec. 324 of the 1926 Act.

Section 1108 (a) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(a) The Secretary, or the Commissioner with the approval of the Secretary, may prescribe *the extent, if any*, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect." [Italics supplied.]

Thus, these provisions make it clear beyond question that the new regulations are to have universal application, both prospective and retrospective, *unless* the Secretary of the Treasury or the Commissioner has prescribed that they may operate without retroactive effect. But neither the Secretary nor the Commissioner has so prescribed with respect to these provisions, and we do not understand petitioner to contend the contrary.

Accordingly, unless the new provisions should for some reason be invalid they are applicable to and control the outcome of this case.

Petitioner's argument seems to be that the 1933 edition required a result contrary to that in the later edition, and that the Commissioner was powerless to amend the 1933 edition so as to affect her liability for gifts made a year and several months prior to the amendment.

Our position is twofold. We contend, first, that the 1933 edition never dealt with this type of gift at all; and second, that even if such gifts had been

specifically covered by the 1933 edition, it was fully within the competence of the Commissioner to promulgate new regulations having universal application which were to supersede existing regulations.*

First. The 1933 regulations did not deal with gifts of single premium or paid-up policies of life insurance. The only provisions in Regulations 79 (1933 ed.) relied upon by petitioner are found in Article 2 (5) which provides:

The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

* Of the six circuit courts of appeals which have considered this question two have decided it in favor of the Government, namely the court below in the instant case, and the First Circuit in the *Powers* case, No. 486, to be argued consecutively with the instant case. The four decisions to the contrary are: *Commissioner v. Haines*, 104 F. (2d) 854 (C. C. A. 3d); *Helvering v. Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Helvering v. Bryan*, 109 F. (2d) 430 (C. C. A. 4th); and *United States v. Ryerson*, 114 F. (2d) 150 (C. C. A. 7th), now pending before this Court, No. 494; and to be argued immediately following the *Powers* case, No. 486.

The *Haines* decision treated the 1933 edition as being applicable rather than the 1936 edition. The opinion stated that what it regarded as the pertinent language in the 1933 edition "remained the same in the 1934 and 1935 editions of Treasury Regulations 79." But the court erred in so stating, for there were no editions of Regulations 79 issued in

As the court below recognized (R. 197), those provisions were not designed to meet such a situation as is here presented. The very fact that they specify the amount of the gift to be the *sum* of the net cash surrender value and the prepaid insurance adjusted to the date of gift discloses the scope which the Commissioner intended those provisions to have.

A typical case for the application of those provisions would be the gift of an annual premium policy on which, say 7 premiums had been paid, and where the gift had been made three months after payment of the seventh premium. Applying those provisions, the amount of the gift would be the cash surrender value of the policy plus nine-twelfths of the prepaid insurance obtained by pay-

1934 or 1935. The only editions are the 1933 and 1936 editions. Moreover, the court also declared that in "reenacting" the applicable statutory provisions in 1934 and 1935, "Congress must be taken to have approved the administrative construction." P. 855. But here again, the court was in error, because there was no reenactment of the provisions mentioned by the court in 1934 or 1935 or at any other time. Cf. *Helvering v. Hallock*, 309 U. S. 106, 120 n.. Accordingly, this case can be distinguished from *Helvering v. Reynolds Tobacco Co.*, 306 U. S. 110, upon which the *Haines* opinion relied, for there is no room for the contention here that the early regulations by reason of their long standing in the face of repeated reenactments of the statute had become so imbedded in the statute as to prevent any retroactive change.

The decisions in the other three cases were predicated primarily upon the reasoning of the *Haines* decision, and are therefore equally unreliable.

ment of the seventh premium—i. e., that portion of the prepaid insurance that the donee will enjoy over the remaining nine months.

But those provisions had no application whatever to single premium policies. Indeed, when the 1936 edition was issued, the substance of those provisions was carried over with respect to annual premium policies. Thus, Article 19 (9) of Regulations 79 (1936 ed.) provides:

* * * when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

And since the reserve is approximately equal to the cash surrender value (together with a surrender charge), it is not unfair to state that these provisions roughly accomplish the same result as would be reached by applying the provisions of Article 2 (5) of the earlier regulations.

But the provisions of Article 2 (5) of the early regulations were never designed nor did the Treasury ever consider them as being applicable to a case such as is here presented. And when the

Treasury became aware of the fact that those provisions might be misconstrued to apply to such a case, it promptly changed those provisions in the new edition of Regulations 79, promulgated less than two and one-half years after the earlier edition had appeared.

Indeed, if one were to attempt to apply the provisions of Article 2 (5) of the 1933 edition literally to a single-premium policy given away at the time of purchase, one would reach the result that the single premium is the amount of the gift rather than the cash surrender value. And the circuitous computations that would be necessitated by such an application shows, we submit, that those provisions could not have been intended to govern such a situation.

The 1933 edition of Regulations 79 dealt only with transactions occurring after the date of the enactment of the gift tax statute on June 6, 1932. See Article 2 (Appendix, *infra*, p. 39). For a complete understanding of the regulations it must be recalled that after the repeal of the Revenue Act of 1924 there was no gift tax in effect until the enactment of the Revenue Act of 1932. Hence it was realized that various transactions which would constitute taxable gifts under the new statute might occur in connection with existing insurance policies. Accordingly, the regulations took note of the situation and specified three such transactions: (1) the irrevocable assignment of a policy; (2) the

naming of a beneficiary without retaining any of the legal incidents of ownership; and (3) the payment of premiums by an insured who has none of the legal incidents of ownership in the policy, and where the beneficiary is other than the donor's estate.

The first two of these transactions are dealt with in Article 2 (5) and the third transaction is dealt with in Article 2 (6). Similar transactions could also occur with respect to policies taken out after June 6, 1932, and the regulations were quite adequate to deal with any one of the three transactions where it occurred separately. However, the Treasury at the time of these regulations had had no experience with gifts of single-premium insurance policies simultaneously with their issuance and the regulations accordingly did not attempt to provide specially for such a combination of transactions. Nevertheless, if Articles 2 (5) and 2 (6) are applied literally to the gifts here involved, the result will be that the cost of the policies will be the measure of the tax.

Article 2 (5) alone provides that the irrevocable assignment of a life-insurance policy constitutes a gift in the amount of the cash-surrender value, plus the prepaid insurance adjusted to the date of the gift. This article assumes a payment of premium in advance of the gift. No gift tax would be incurred merely by taking out a policy and paying the premium, but if a taxable transaction occurs.

later within the period for which the premium has already been paid, the regulation requires that an adjustment of the premium shall be made. The adjustment is obviously for the purpose of determining the portion of the paid premium which is properly applicable to the period beginning with the date of the gift and ending with the date to which the premiums already have been paid. For example, if a six months' premium had been paid on May 6, 1932 (one month before the enactment of the statute), and the policy were irrevocably assigned on July 6, 1932 (one month after the enactment of the statute), two-sixths of the premium would be allocable to the period prior to the gift and four-sixths of the premium would be allocable to the period from the date of the gift (July 6, 1932) to the expiration of the six months' premium period (November 6, 1932).

If an additional six months' premium should be paid by the donor on November 6, 1932, such payment would constitute an additional gift and be covered by Article 2 (6) of the Regulations.

The facts in this case disclose both an irrevocable assignment covered by Article 2 (5) and a payment of premiums covered by Article 2 (6). However, the combined application of Article 2 (5) and Article 2 (6) to the combination of taxable transactions exhibited by the facts of this case would not mean that the valuation is to be the sum of the cash-surrender value and the premiums.

The regulations have been interpreted to exclude the portion of the cash-surrender value which is credited to the policy by reason of the very premium which is included in the calculation. G. C. M. 13147, XIII-1 Cumulative Bulletin 358 (1934), Appendix, *infra*, pp. 40-45. It will be noted that this ruling, like Article 2 (5), assumes the premium payment at a different time from the gift, but the method of avoiding duplication by eliminating the cash-surrender value created by the premium payment is equally applicable here. Since the full premium was paid in advance in the case at bar, the entire cash-surrender value was created by the premium payment (*United States v. Ryerson, supra*), and the cash-surrender value would therefore be entirely eliminated. As thus interpreted, the application of both Article 2 (5) and Article 2 (6) to the facts of this case would require the following computation: add together the cash-surrender value and the premium payment and then deduct the entire cash-surrender value. This leaves, as the value upon which the tax is to be computed, only the amount of the premium paid.

A similar result would be reached by a literal application of Article 2 (5) alone, without resorting to Article 2 (6) at all. Prepaid insurance is defined in G. C. M. 13147 as the premium paid prior to the date of the gift to obtain insurance coverage for a period subsequent to the gift. Although the case was tried on the assumption that the

policies were issued and assigned simultaneously (R. 13, 18, 194), the premium payment necessarily was made before the policies were in force and the issuance of the policies must have preceded the assignment as a matter of fact, even though the interval was short. In this situation it is perhaps strictly accurate to say that the entire amount of the premium constituted prepaid insurance and that no adjustment is necessary because the interval between the issuance of the policies and the assignment was inconsequential. Upon this view the computation under Article 2 (5) would be as follows: add cash surrender value and prepaid premium; deduct all of the cash surrender value because it was all created by the single premium payment and no adjustment of the premium payment has been made. The result is a value equal to the whole amount of the single premium.

The circuity attendant upon the application of the foregoing provisions of the 1933 Regulations to single premium policies makes it evident that they were drafted with only ordinary insurance in mind and were never intended to apply to policies like those involved herein. The only provisions in the 1933 Regulations applicable to the situation presented by the case at bar are the general provisions of Article 19 (1), Appendix, *infra*, p. 40, which provide:

Art. 19. Valuation of property.—(1) General.—The statute provides that if the gift is made in property, the value thereof

at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case.

But those provisions were too general and did not furnish a precise enough guide for the type of gift here presented. Indeed, if they were applied, the considerations discussed, *supra*, pp. 9-15, would require that the value of the policy be treated as the price that one would have to pay an insurance company therefor in the open market. And, at the very most, the 1936 Regulations merely crystallized into a specific rule the result that would be obtained in any event under the general provisions of Article 19 (1) of the 1933 Regulations.

Second. Even if the 1933 regulations originally did support petitioner's position, it was within the power of the Commissioner to replace them with the 1936 regulations. We have endeavored to show in the foregoing discussion that Article 2 (5) of the 1933 Regulations, relied upon by petitioner, was not intended to deal with gifts of single premium

policies, and that Article 19 (9) of the 1936 Regulations for the first time prescribed the formula to be applied. But if we should be in error in that position, then we respectfully submit that the Commissioner had full authority to issue the new regulations as applied to this case.

The plenary power to prescribe the extent to which any ruling, regulation, or Treasury decision may operate with⁵ or without retroactive effect is plainly recognized by Section 1108 (a) of the Revenue Act of 1926, as amended by Section 506 of the Revenue Act of 1934, quoted, *supra*, p. 16. Those provisions are rich in legislative history.

The first comparable statutory provisions appeared in the Revenue Act of 1921, c. 136, 42 Stat. 227. Section 1314 of that Act provided:

RETROACTIVE REGULATIONS

SEC. 1314. That in case a regulation or Treasury decision relating to the internal-revenue laws made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary, is reversed by a subsequent regulation or Treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or Treasury decision may,

⁵ For decisions involving retroactive application of regulations, see *Morrissey v. Commissioner*, 296 U. S. 344, 355; *Murphy Oil Co. v. Burnet*, 287 U. S. 299; *Manhattan C. & S. v. Commissioner*, 297 U. S. 129.

in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect.

In commenting upon those provisions (referred to as Sec. 1002 in the House bill), the House Ways and Means Committee stated (H. Rep. No. 350, 67th Cong., 1st Sess., p. 15):

Section 1002 would permit the Treasury Department to apply without retroactive effect a new regulation or Treasury decision reversing a prior regulation or Treasury decision, unless such reversal is occasioned or required by a decision of a court of competent jurisdiction.

And the Senate Finance Committee similarly remarked (S. Rep. No. 275, 67th Cong., 1st Sess., p. 32):

Section 1314 of the proposed bill authorizes the commissioner, with the approval of the Secretary, to provide in making a regulation or Treasury decision which reverses a prior regulation or Treasury decision (if it is not immediately occasioned by a decision of a court of competent jurisdiction) that the new regulation or Treasury decision may be applied without retroactive effect.

Thus, it was clear that under the 1921 Act, any change in the regulations was to operate retrospectively as well as prospectively, unless the Treasury determined to permit the change to operate prospectively only. But where the change in regulations was occasioned by judicial decision the

Treasury was to have no discretion: such change was to affect all tax years, both before and after the change.

The next revenue act, the Revenue Act of 1924, c. 234, 43 Stat. 253, made no change in these provisions which were embodied in Section 1008 (a) of that Act. Thereafter, the same provisions were carried over as Section 1108 (a) of the Revenue Act of 1926, without any alteration. However, Section 605 of the Revenue Act of 1928, c. 852, 45 Stat. 791, amended Section 1108 (a) of the 1926 Act as follows:

SEC. 605. RETROACTIVE REGULATIONS.

Section 1108 (a) of the Revenue Act of 1926 is amended to read as follows:

"SEC. 1108. (a) In case a regulation or Treasury decision relating to the internal-revenue laws is amended by a subsequent regulation or Treasury decision, made by the Secretary or by the Commissioner with the approval of the Secretary, such subsequent regulation or Treasury decision may, with the approval of the Secretary, be applied without retroactive effect."

The purpose of the amendment was to increase further the discretion given to the Treasury. It was intended to permit the Treasury to determine whether a change in regulations should operate prospectively only, even where the change was induced by judicial decision. This was made abundantly clear by the Senate Finance Committee

which stated (S. Rep. No. 960, 70th Cong., 1st Sess., p. 40):^a

Section 1108 (a) of the revenue act of 1926 provides that where a regulation or Treasury decision is reversed by a subsequent regulation or Treasury decision, the subsequent decision may be applied without retroactive effect if the reversal is not immediately occasioned or required by a court decision. The policy of this provision is highly desirable, and in view of the fact that the Bureau of Internal Revenue is now comparatively free from the congestion of cases from the war years, it is believed that this policy may now be extended to cases where the new regulation or Treasury decision is occasioned or required by a court decision. Fundamentally there is no difference in the

^a In accepting the Senate amendment, the Conference Committee declared (H. Rep. No. 1882, 70th Cong., 1st Sess., p. 22):

"Section 1108 (a) of the revenue act of 1926 permits the commissioner to apply a new regulation or Treasury decision without retroactive effect when the new regulation or Treasury decision is not immediately occasioned by a court decision.

"This desirable policy has been extended by the Senate amendment so as to include all regulations and Treasury decisions whether or not occasioned by a court decision. It is hoped that this provision will prevent the constant re-opening of cases on account of changes in regulations or Treasury decisions, and it is believed that sound administration properly places upon the Government the responsibility and burden of interpreting the law and of prescribing regulations upon which the taxpayers may rely; and the House recedes."

two cases which can justify the restrictions in section 1108 (a) of the 1926 Act. Accordingly, these restrictions have been removed in section 605 of the bill. * * *

The final change wrought in these provisions appeared in Section 506 of the Revenue Act of 1934, which amended Section 1108 (a) of the 1926 Act to read:

"(a) The Secretary, or the Commissioner with the approval of the Secretary, may prescribe *the extent, if any*, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect." [Italics supplied.]

The discretion vested in the Treasury was now complete. The Treasury could determine not only whether changes in regulations were to be retrospective in all cases, but it was given the further power of declaring the exact extent of retroactivity. Thus, under the new provisions, the Treasury might provide for a change in regulations that would operate retroactively for any designated period. The committee reports leave no doubt whatever that this was the purpose of these provisions. The House Ways and Means Committee unambiguously explained the amended provisions as follows (H. Rep. No. 704, 73rd Cong., 2nd Sess., p. 38):

This section amends section 1108 (a) of the Revenue Act of 1926, as amended, so as to permit the Secretary, or the Commis-

sioner with the approval of the Secretary, to prescribe the extent, if any, to which any regulation, Treasury Decision, or ruling relating to internal revenue taxes shall be applied without retroactive effect. The amendment extends the right granted by existing law to the Treasury Department to give regulations and Treasury Decisions amending prior regulations or Treasury Decisions prospective effect only, by allowing the Secretary, or the Commissioner with the approval of the Secretary, to prescribe the exact extent to which any regulation or Treasury Decision, whether or not it amends a prior regulation or Treasury Decision, will be applied without retroactive effect. The amendment furthermore permits internal revenue rulings as well as regulations or Treasury Decisions to be applied without retroactive effect. *Regulations, Treasury Decisions, and rulings which are merely interpretive of the statute, will normally have a universal application, but in some cases the application of regulations, Treasury Decisions, and rulings to past transactions which have been closed by taxpayers in reliance upon existing practice, will work such inequitable results that it is believed desirable to lodge in the Treasury Department the power to avoid these results by applying certain regulations, Treasury Decisions, and rulings with prospective effect only. [Italics supplied.]*

A similar statement was made by the Senate Finance Committee. S. Rep. 558, 73rd Cong., 2nd Sess., p. 48.

The history of these provisions plainly shows, we submit, that Congress intended the Treasury to have full and complete discretion to determine to what extent changes in regulations are to operate retroactively. Nowhere in the legislative history is there the slightest suggestion that the Treasury's discretion was to be limited, in the language of *Helvering v. Reynolds Tobacco Co.*, merely "to correct misinterpretations, inaccuracies, or omissions." 306 U.S. at 116. The broad sweep of the statutory provisions themselves and the clear and persistent statements appearing in the committee reports afford no support whatever for limitation imposed upon those provisions by the *Reynolds* decision. In the circumstances, we think it peculiarly appropriate to ask the Court to reconsider its decision in the *Reynolds* case.

Under the foregoing provisions of the revenue law, it is plain that the Commissioner had *statutory* authority to apply the 1936 Regulations to the transactions here in controversy. And we respectfully submit that the only question remaining is whether the exercise of that authority in the circumstances is so arbitrary as to be violative of due process.

Since the officers of the Government who administer the tax laws are probably in a better position to know whether any particular regulation would

be oppressive if given retroactive application, the Congress wisely left it to the Commissioner and the Secretary in each instance to determine whether and to what extent a particular regulation would operate without retroactive effect. And to the extent that equities may be thought to arise merely from the passing of long periods of time, Congress apparently felt that taxpayers would be sufficiently protected by the statute of limitations.

That the amendment in the instant case was neither arbitrary nor oppressive is clear. Unlike the regulation in the *Reynolds* case which had announced the *nontaxability* of a certain transaction, the regulation here simply deals with the *measure* of tax upon a concededly taxable transaction. When petitioner made the gifts in question she knew that they would be subject to tax, and since the tax is upon the amount of money or property which passes from the donor, there is nothing arbitrary or capricious about subsequent provisions which make it clear that the tax is to be measured by the amount which the taxpayer had donatively expended. Cf. *Paramino Co. v. Marshall*, 309 U. S. 370, 378; *Graham & Foster v. Goodcell*, 282 U. S. 409, 429; *Hecht v. Malley*, 265 U. S. 144, 164; *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297, 302.

A similar objection under the Fifth Amendment was made to a statutory change in the estate-tax rates in *Milliken v. United States*, 283 U. S. 15. There a decedent who had made a gift in contem-

plation of death while the Revenue Act of 1916 was in effect, died after the enactment of the Revenue Act of 1918 which imposed an estate tax at much higher rates than under the 1916 Act. In sustaining the tax at the higher rates, the Court said (p. 23):

Not only was the decedent left in no uncertainty that the gift he was then making was subject to the provisions of the existing statute, but in view of its well understood purpose he should be regarded as taking his chances of any increase in the tax burden which might result from carrying out the established policy of taxation under which substitutes for testamentary gifts were classed and taxed with them.

Cf. *Cohan v. Commissioner*, 39 F. (2d) 540, 545 (C. C. A. 2d); *United States v. Hudson*, 299 U. S. 498.

Accordingly, if the 1936 Regulations had been enacted by Congress there could be no doubt as to their validity. However, Congress has specifically given the Commissioner the power to promulgate such retroactive regulations. He has exercised that power in this case, and in so doing he not only acted within his statutory authorization but acted within the constitutional requirements of due process. To the extent that the *Reynolds* decision denies that power to the Commissioner it is in square conflict with the unambiguous terms of a valid statute. That decision transfers to the courts the discretion

which Congress lodged with the Commissioner. It is erroneous and should be overruled.

CONCLUSION

The 1936 Regulations are applicable and valid. The decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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JANUARY 1941.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * * (U. S. C., Title 26, Sec. 550).

SEC. 506. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift (U. S. C., Title 26, Sec. 555):

SEC. 530. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

Treasury Regulations 79, issued under the Revenue Act of 1932, promulgated February 26, 1936:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * *

In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate

and full consideration in money or money's worth:

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

(6) If there is an irrevocable gift of a policy of life insurance and the insured thereafter pays premiums thereon, each premium payment is a gift in the amount thereof.

ART. 19. *Valuation of property.*—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell.

(9) *Life insurance and annuity contracts.*—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly en-

gaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

The example given below, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

Example: A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity; the value of the gift is the cost of the contract.

* * * * *

Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example: A gift is made four months after the last premium due date of an ordi-

nary life insurance policy issued nine years and four months prior to the gift thereof by the insured, who was 35 years of age at date of issue. The gross annual premium is \$2,811. The computation follows:

Terminal reserve at end of tenth year	\$14,601.00
Terminal reserve at end of ninth year	12,965.00
Increase	1,636.00
One-third of such increase (the gift having been made four months following the last preceding premium due date), is	\$545.33
Terminal reserve at end of ninth year	12,965.00
Interpolated terminal reserve at date of gift	13,510.33
Two-thirds of gross premium (\$2,811)	1,874.00
Value of the gift	15,384.33

Treasury Regulations 79, October 30, 1933, edition:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none

of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment is a gift in the amount thereof.

* * * * *

ART. 19. Valuation of property.—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case.

* * * * *

(7) *Annuities, life, remainder, and reversionary interests.*—Where the donor purchases from a life insurance company or other company issuing annuity contracts, an annuity for the donee, the value of the gift is the cost to the donor, * * *

G. C. M. 13147, XIII-1 Cumulative Bulletin 358
(1934):

Regulations 79, Article 2: Transfers reached.

XIII-22-6820

(Also Section 506 and Article 17.)

G. C. M. 13147

Computation of the value of an irrevocably assigned life insurance policy for gift tax purposes.

A ruling is requested as to the proper method of computing the value of a life in-

insurance policy, for gift tax purposes, which was irrevocably assigned on April 1, 1933, without consideration.

Section 501 of the Revenue Act of 1932 imposes a tax upon all transfers of property by any individual after June 6, 1932, to the extent that they are donative in character and exceed the authorized deductions.

Section 506 of that Act provides that—

“If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.”

Article 2 of Regulations 79 reads in part as follows:

“The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * *

“(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.”

A life insurance policy in the amount of \$100,000 taken out on January 1, 1928, was irrevocably assigned by the insured on April 1, 1933, without consideration. The annual premium of \$2,849 was payable in advance on January 1. The policy provides in part as follows:

“The cash surrender value shall be the reserve on the face of the policy at the end of the insurance year or, event of default, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any outstanding paid-up ad-

ditions, under section 2, option (c), plus any dividends standing to the credit of the policy, under section 2, option (d), and less a surrender charge for the third to the ninth years, inclusive, of not more than $1\frac{1}{2}$ percent of the face of the policy. Such reserve will be computed on the basis of the American Table of Mortality and interest at 3 percent, and the amount of paid-up insurance under (2) and the term of the continued insurance and amount of pure endowment under (3) will be computed on the same basis at the attained age of the insured on the date of default.

"The values in the table opposite are computed in accordance with the above provisions, assuming that premiums have been paid in full when due for the number of years stated, that there is no indebtedness to the company, no outstanding paid-up additions, no dividends standing to the credit of the policy and that no dividends have been applied on the accelerative endowment plan; the surrender charge, if any, has been deducted."

After the policy has been in force for a period of four years the cash surrender value for each \$1,000 of the face amount is \$46, and after the policy has been in force for a period of five years the cash surrender value for each \$1,000 of the face amount is \$63. All premiums were paid when due, no indebtedness was due the company by the holder prior to assignment, and there were no paid-up additions and no dividends standing to the credit of the policy.

It is to "the net cash surrender value, if any," that the addition of "the prepaid insurance adjusted to the date of the gift" (article 2, Regulations 79) is to be made.

The word "prepaid," meaning in advance or beforehand, obviously refers to a payment antedating the making of the gift. Fundamentally, life insurance, like other insurance, is simply a contract. By paying premiums the insured obtains the promise of the insurer to pay money on the former's death, or before that event. As such promise by the insurer is "insurance," and is bought by the premium payments, the two words, "prepaid insurance," manifestly mean a premium payment made before the gift to obtain the promise of the insurer. That promise may be to pay a sum in cash on surrender of the policy contract, or, if not surrendered, to pay the face of the policy on the insured's death. Whatever the terms of the promise, the obtaining or purchasing thereof is through premium payments.

The following examples illustrate the Bureau's interpretation of the meaning of the concluding clause of subdivision (5) of article 2, Regulations 79, reading—"plus the prepaid insurance adjusted to the date of the gift":

"1. In a case where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, and where such value was increased to \$6,300 immediately upon the payment on January 1, 1933, of the \$2,849 premium due for the insurance year 1933, the amount of the gift on April 1, 1933, the date on which the policy was irrevocably assigned, was \$6,300, representing the cash surrender value of the policy, plus \$861.75, representing the prepaid insurance adjusted to the date of the gift. (Premium paid January 1, 1933, \$2,849 less \$1,700, the additional cash surrender value created by the

payment of such premium, and less \$287.25, representing the earned premium from January 1 to April 1, 1933; $\$2,849 - \$1,700 = \$1,149 - \$287.25 = \$861.75$.)

"2. In a case where the premium was duly paid for the insurance year 1933, where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, where the cash surrender value was increased to \$6,300 at the end of the insurance year 1933, and where the cash surrender value of \$6,300 was adjustable to the date of surrender of the policy, the amount of the gift on April 1, 1933, the date on which the policy was irrevocably assigned, was \$5,025 (representing the cash surrender value adjusted to April 1, 1933), plus the present worth of \$1,275 (the balance added to the cash surrender value at the end of the insurance year 1933), plus \$861.75, representing the unearned premium adjusted to the date of the gift and computed in the manner set forth in example 1.

"3. In a case where the \$2,849 premium was duly paid for the insurance year 1933, where the cash surrender value of the policy at the end of the insurance year 1932 was \$4,600, where that value was increased to \$6,300 at the end of the insurance year 1933, and where the cash surrender value of \$6,300 was not adjustable to the date of surrender of the policy, the value of the gift on April 1, 1933, the date on which the policy was irrevocably assigned, was \$4,600 (representing the cash surrender value of the policy), plus the present worth of \$1,700, the amount added to the cash surrender value at the end of the insurance year 1933, plus \$861.75, representing the unearned premium adjusted to

the date of the gift and computed in the manner set forth in example 1."

In view of the foregoing, it is held that, where the insured makes a gift of the insurance to another, the insured having theretofore paid a premium in purchase of the insurer's promise, which promise covers a period not yet elapsed when the gift is made, the value of the gift includes (as illustrated in the foregoing examples) the net cash surrender value of the policy at the date of the gift and that proportionate part of the premium paid before the gift, which covers a period extending beyond the gift. When the premium payment purchases the right to an increased cash surrender value, which is not available until the end of the policy year, a discount is required in arriving at its present worth as of the date of the gift.

ROBERT H. JACKSON,
*General Counsel, Bureau of
Internal Revenue.*

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

NO. 92.

FLORENCE GUGGENHEIM, Petitioner,

v.

**ALMON G. RASQUIN, Individually and as United States
Collector of Internal Revenue for the First
District of New York, Respondent.**

NO. 486.

MADELEINE D. POWERS, Petitioner,

v.

**COMMISSIONER OF INTERNAL REVENUE,
Respondent.**

**On Writs of Certiorari to the United States Circuit
Courts of Appeals for the Second Circuit and
First Circuit.**

**BRIEF OF AMICUS CURIAE IN BEHALF OF
MARTHA F. MASON.**

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INDEX.

	PAGE
Preliminary Statement	2
Questions Presented	3
Argument	4
1. The proper basis for the determination of the value for gift tax purposes of single premium life insurance policies made the subject of gift by the insured in 1935, following their purchase, is the cash surrender value at the date of the gift.....	4
2. When the Commissioner has issued regulations interpretative of a statute imposing a gift tax, following which the provisions of the statute are re-enacted by Congress without change, the Commissioner may not thereafter apply retroactively a new regulation changing his already-established interpretation so as to increase the tax upon already-consummated transactions..	13

Cases Cited.

Commissioner v. Madeleine D. Powers, 115 Fed. (2d) 209 (#486 Oct. Term, U. S. Sup. Ct.)	8
Denver Union Stock Yards v. U. S., 304 U. S. 470...	10
Florence Guggenheim v. Rasquin, 110 Fed. (2d) 371 (#92 Oct. Term U. S. Sup. Ct.)	6
Helvering v. Reynolds, 306 U. S. 110.....	17
Helvering v. Winmill, 305 U. S. 79.....	14

Index.

	PAGE
Lucas v. Alexander, 279 U. S. 573.....	11
McCaughn v. Hershey Chocolate Co., 283 U. S. 488..	15
Minnesota Rate Cases, 230 U. S. 352.....	10
U. S. v. Dakota-Montana Oil Co., 288 U. S. 459.....	14

Statutes.

Revenue Act of 1932 Sec. 506	4
Revenue Act of 1926 Sec. 1108a	16
Revenue Act of 1928 Sec. 605	16
Revenue Act of 1934 Sec. 506	17
Regulations 79 (1933 Edition) Art. 2 (5)	5, 13
Regulations 79 (1936 Edition) Art. 19 (9)	6, 8, 12

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**On Writs of Certiorari to the United States Circuit
Courts of Appeals for the Second Circuit and
First Circuit.**

**BRIEF OF AMICUS CURIAE IN BEHALF OF
MARTHA F. MASON.**

**This Brief of *Amicus Curiae* in behalf of Martha F.
Mason is filed with the consent of Counsel for the Peti-
tioners and Counsel for the Respondents.**

I.

PRELIMINARY STATEMENT.

Mrs. Martha F. Mason is the Petitioner in the case of *Martha F. Mason v. Commissioner of Internal Revenue*, Respondent, which is at present pending before the United States Board of Tax Appeals, Docket No. 92,376, on Petition for Redetermination of a deficiency gift tax for the year 1935 determined by the Commissioner in the amount of \$32,983.18, which alleged deficiency arises because of the determination by the Commissioner that eight single premium life insurance policies purchased by Mrs. Mason in December, 1935, and by her irrevocably assigned in December, 1935, should be valued for gift tax purposes at the amount of the premiums paid, \$356,867.80, rather than at the cash surrender value of said policies at the date of the gift, \$298,784.48.

The Commissioner determined that, for gift tax purposes, the value of said life insurance policies as of the date of the gift was represented by the cost of the contracts in accordance with Article 19 (9) of Regulations 79 (1936 Edition) instead of by the cash surrender values of the contracts in accordance with Article 2 (5) of Regulations 79 (1933 Edition) in effect at the date of the gift.

II.

QUESTIONS PRESENTED.

1. What is the proper basis for the determination of the value for gift tax purposes of single premium life insurance policies made the subject of gift by the insured in 1935?
2. When the Commissioner has issued regulations interpretative of a statute imposing a gift tax following which the provisions of the statute are re-enacted by Congress without change, may the Commissioner thereafter apply retroactively a new regulation changing his already-established interpretation so as to increase the tax upon already-consummated transactions?

III.

ARGUMENT.

1. The proper basis for the determination of the value for gift tax purposes of single premium life insurance policies made the subject of gift by the insured in 1935, following their purchase, is the cash surrender value at the date of the gift.

A brief history of the Gift Tax and of the Commissioner's Regulations relative thereto may be helpful to an understanding of the questions at issue.

The first Gift Tax Act was contained in the Revenue Act of 1924, but it was omitted from the Revenue Act of 1926.

The Revenue Act of 1932 (Title III) re-enacted the Gift Tax Act, and it has remained a part of the Internal Revenue Laws since and has been carried over into the Internal Revenue Code—Section 1000, *et seq.*

The Revenue Act of 1932, in making provision for the valuation of gifts made in property, provided (Section 506) :

"If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." (U. S. C. Title 26, Sec. 1005).

No change whatever has been made in the language of this section in succeeding Revenue Acts, and it has been carried over unchanged into the Internal Revenue Code (Section 1005).

The first Regulations issued by the Commissioner dealing with and interpreting the provisions of the Gift Tax Act were Regulations 79 (1933 Edition). By Article 2 (5) of Regulations 79 (1933 Edition), it was provided, as follows:

"The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the cash surrender value, if any, plus, the prepaid insurance adjusted to the date of the gift."

Subsequent to the issuance of the aforesaid Regulations, the petitioners in the instant cases, as well as a number of others, including Martha F. Mason, whose cases have come before the lower courts on the same question, purchased single premium policies on their own lives, and, immediately or shortly thereafter, irrevocably assigned the policies to others, the assignments being made in such a way as to effect a gift of whatever interest in the policies the donors could assign. The donors filed gift tax returns for the year in which the assignments were made, and, in reliance upon and in accordance with the then extant Regulations of the Commissioner, returned as the value of the gifts the cash surrender values of the policies assigned. Shortly thereafter, in response to the request of the Treasury Department, the companies which had issued the policies of insurance made returns on official Treasury Department forms of the amount of the cash surrender values of the policies as of the date of the gifts.

On February 26, 1936, after the completion of the gifts in the instant cases, as well as in similar and related cases now before the lower courts, the Commission issued an amended edition of Regulations 79 wherein he completely changed the basis of value established in

the 1933 Edition and provided—Article 19 (9)—that the value for gift tax purposes of single premium policies (similar to those involved in the instant cases) should be the cost thereof.

It is respectfully submitted that Article 2 (5) of Regulations 79 (1933 Edition) was the fair and reasonable interpretation of Section 506 of the Gift Tax Act. *Per contra*, Article 19 (9) of Regulations 79 (1936 Edition) is an unreasonable and unjust interpretation of the language of Section 506 of the Gift Tax Act.

The Second Circuit Court in its decision in Case No. 92, *Florence Guggenheim v. Rasquin, Collector*, has chosen to regard the Commissioner's amended Regulations as presenting the fair interpretation of Section 506, and has referred to the original Regulations as "ambiguous." In support of this contention, there is cited in the Opinion an instance of a parent purchasing an automobile for \$1,000.00, the automobile to be delivered to a son as a gift. Inferring that there is an analogy, and calling attention to the reasonable inference that the son could not obtain the full purchase price for the car even on the date of its delivery, the Court concludes that the value of the gift in such case would be \$1,000.00, and sees in this example an analogy to be used in arriving at the proper basis for valuing insurance policies which are made the subject of gifts.

To quote the language of the Court:

"We see no difference in principle between that case (i. e., the gift of the car) and the case where the parent takes out a single premium paid-up life insurance policy and gives it to a son forthwith."

After having accepted the two instances of gifts as analogous, the Court comes rather summarily to its conclusion:

"The value of the policy is what the parent paid for the policy, not what the son might obtain for it by surrendering it to the insurance company."

Let us suppose that the Second Circuit Court, in lieu of the instance cited above, had used as an example a case where a man "A" had ordered from a tailor a suit made to order, for which "A" paid one hundred dollars (\$100.00); and that shortly after delivery of the suit, "A" gave it to "B". Could the Second Circuit Court have reasonably concluded that the value of "A's" gift to "B" of this suit, made to "A's" specifications, was equal to the amount that "A" had paid to the tailor? At the date of the gift, would such suit have a realizable value to "A", or to any other person, equal to its cost?

What the Second Circuit Court has apparently lost sight of is the fact that the automobile, which has been made the object of the illustrative gift, is a standardized unit, and that such unit would have the same value to any prospective purchaser of that model and make of automobile. However, in the case of a life insurance contract, we are dealing with a unique chose in action, a long term contract peculiarly adapted to the age and requirements of a particular person, which, although issued for a definite single premium, yet at any specific time following its issuance had no greater realizable value to a purchaser, a donee, or even the insured himself than the cash surrender value at that time.

The value of the insurance policy to the insured will vary according to social and moral factors and obligations which are peculiar to him, and it will be a value that cannot be expressed in monetary terms. Its value to any other person dealing at arms-length with the insured could never conceivably be more than what the insurance company would then be willing to pay upon the surrender of the policy to it. A prospective pur-

chaser or a person to whom the policy was assigned as a gift would have no interest, in the slightest degree, in policy reserves or in what the insured had paid for his policy or in the manner in which the amount of the premium paid was arrived at by the insurance company.

The First Circuit Court in the case of *Commissioner v. Madeleine D. Powers* has likewise agreed with the Commissioner's second interpretation as expressed in the amended edition of Regulations 79 (1936 Edition), Article 19 (9), citing the case of *Guggenheim v. Rasquin*, *supra*, as a precedent, if not a controlling authority. The reasoning of the Court in the *Powers* case appears to be that because insurance policies, once having been taken out, are not bought and sold in the market place like shares of stock or bushels of wheat, therefore their value as gifts must be assumed to be the premiums which the donors had paid to the insurance companies. The Court rejects the "fallacy" that the cash surrender value is the proper basis for arriving at the value of a policy. It endeavors to demonstrate that such basis is fallacious by pointing out that in at least one of the policies (in the *Powers* case), the insurance company was under no obligation to pay any cash surrender value during the first year of the policy's life.

It is quite correct, as the Court points out, that it could not be argued successfully that this policy had no value during its first year. However, it does not follow that the cash surrender value therefore is not the basis for determining the value of the policy. What the Court apparently fails to realize is that a fixed cash surrender value available at the end of one year can be realized upon by the insured *at any time* after the policy is issued by the simple expedient of assigning the policy to a third person who is willing to currently discount the obligation of the insurance company to pay a stated sum (cash

surrender value) one year after the policy has been issued.

The Court endeavors to bolster its conclusion by taking judicial notice of the fact that single premium policies have apparently no depreciation but constantly increase in value with the lapse of time. It regards this feature of a life insurance contract as indicating that the lowest value a single premium policy has is its cost and that from the date of its issuance, such value must inevitably increase.

But the only basis which is disclosed in the Court's opinion (and in the Record for that matter) for the conclusion that single premium policies invariably increase in value is the fact that their cash surrender values are larger each year than the preceding year. At the inception of the policy, however, such value is lower than the cost of the policy and a considerable lapse of time (necessarily at least several years) is required for the cash surrender value to equal the single premium paid.

No one would question that had the donors in the *Guggenheim* and *Powers* cases retained their policies a year and then made gifts of them, the taxable value of the gifts would have been greater than it was at the time the gifts were actually made. Simply by reference to the Table of Cash Surrender Values in the respective policies, the progressive increase in realizable values of the policies can be ascertained, and it is this cash surrender value changing and increasing as it does from year to year that measures the actual value of the gift. And even in the case of single premium policies some considerable lapse of time is required before realizable value equals the amount of the premium paid.

In the case of single premium policies such as those involved in the present cases, cost cannot be taken as a

true measure of their value. Each policy is a chose in action made to order. Its value in money or in money's worth can no longer be said to be as much as the insured paid for it. This factor of uniqueness necessarily reduces the value of the policy in the case of a purchaser or donee to the then cash surrender value of the policy. It is not what the insured bought but what he gave that is the subject of the Gift Tax and the only sound and proper basis for valuation for Gift Tax under Section 506 of the Revenue Act is the realizable value of such gift, or to quote said Section 506:

“* * * the value thereof at the date of the gift”

We do not know of an instance where cost has been accepted as the proper basis of valuation in the case of property which has an instantly realizable money value. In fact, the Courts have quite generally refused to recognize cost as the proper basis or at least the sole basis even in the case of property which does not have a readily realizable cash value. *Denver Union Stock Yards v. United States*, 304 U. S. 470, 479; *Minnesota Rate Cases*, 230 U. S. 352, 454.

Surely if this Court has taken such a position with respect to the valuation of a railroad system or a public utility, the liquidation of which would necessarily require great effort over a long period of time, it could hardly be contended that cost was a factor determinative of the value of a life insurance policy which had a readily realizable cash value. The cost or “reproductive” value, for which the Commissioner here contends, is particularly inapplicable to a life insurance contract for the very reasons which have been hereinbefore set forth, i. e., the unique character of the contract as peculiarly adapted to the age, health and family relationship of the insured, but which has no such value to a purchaser or

donee. Furthermore, in accordance with the agreement of the parties expressed in the instrument, such life insurance contract itself, sets forth the value attributable thereto during lifetime, as well as the value at death.

Gifts such as those made in the instant cases and in related cases were not gifts of premiums to the donees. The premiums were paid to the insurance companies, and, in return for the premiums, contracts of insurance were issued upon the lives of the insured (the donors) thereby creating unique choses in action. True, the donor, by assignment in each case, gave away all that he could. But while the insured paid the premium in consideration for the policy, all that he, the insured, as the donor could give away was the chose in action, a contract payable according to its terms, which gave to it specified realizable values at stated periods and which had a lesser value at the date of the gift than its cost, because, by the very manner of its creation, it had been tailored and measured to fit the donor and the donor alone.

The measure of the gift is what the donor or donee could have received upon a sale or surrender of the policy, as of the date of the gift (any time after it had been issued).

It has been urged before the lower courts, and may also be urged in the instant cases, that, in the case of *Lucas v. Alexander*, 279 U. S. 573, this Court has rejected the "Cash surrender value" as a measure of value of an insurance policy as of any given date. That case, however, dealt with an insurance policy which, during the lifetime of the insured, had already matured in an amount in excess of the aggregate of premiums paid in; and the only question involved was the determination of the value of the policy as of March 1, 1913, the policy having been taken out before that date, in order to fix

the amount of gain to the insured taxable for his income tax purposes.

Quite correctly, this Court rejected the argument of the Collector of Internal Revenue that for income tax purposes of the insured the cash surrender value as of March 1, 1913 of a policy which had matured was the cost basis thereof. To accept such an argument would have made disproportionately large the amount of the gains which had accrued since March 1, 1913, and would have made disproportionately small those which had occurred prior to March 1, 1913.

In no case, so far as we know, decided by the Board of Tax Appeals or any other Court, has the Government proved or attempted to prove by testimony or otherwise " * * the value thereof at the date of the gift * * " of single premium life insurance policies, the subject of a gift. On the contrary, it has relied entirely on the single standard arbitrary dictum set up by the Commissioner in his regulations issued in 1936 that the value of the gift is the cost of the policy, ignoring all of the usual and ordinary elements of value, and despite the specific provision contained in Regulations 79 (1933 Edition) and carried even into the 1936 Edition of those Regulations (Art. 19 (1)) that "All relevant facts and elements should be considered in every case." On the other hand, in most, if not all of these cases, the taxpayers have proved by competent testimony (and such testimony has not been rebutted by the Commissioner) that such policies have no higher or greater value at the date of the gift than the cash surrender value and that the cash surrender value is the fair market value.

For the reason that the 1933 Edition of Regulations 79 appears to correctly and reasonably interpret Section 506 of the Revenue Acts of 1932, 1935 and 1936, and for the further reason that Article 19 (9) of the Amended

Regulations 79 appears to interpret Section 506 incorrectly, it is respectfully urged that the decisions of the First and Second Circuit Courts in the instant cases be reversed.

2. When the Commissioner has issued regulations interpretative of a statute imposing a gift tax following which the provisions of the statute are re-enacted by Congress without change, the Commissioner may not thereafter apply retroactively a new regulation changing his already-established interpretation so as to increase the tax upon already-consummated transactions.

The Revenue Act of 1932, as hereinbefore stated, re-enacted as "Title III" a Gift Tax Act. The effective date of the Revenue Act of 1932 was June 6, 1932.

The Revenue Act of 1934 was enacted May 10, 1934, and it amended the Gift Tax Act and made certain changes in the rates of tax. No change, however, was made in Section 506 of said act.

The Revenue Act of 1935 was enacted August 30, 1935, and made further amendments to the Gift Tax Act. No change, however, was made in Section 506.

The Revenue Act of 1936, which was enacted June 22, 1936, made no amendments to any section of the Gift Tax Act.

Article 2 (5) of Regulations 79 (1933 Edition) remained in full force and effect from its publication in 1933 until February 26, 1936, shortly before the enactment of the Revenue Act of 1936. That is to say, during the period of its unquestionable force and validity, two successive Revenue Acts were passed by Congress and were approved by the President, both of which Acts dealt with provisions of the Gift Tax Act.

The rule as to the effect of a Regulation interpreting a Statute which has been re-enacted without change, following such interpretation, has been stated in Paul and Mertens "The Law of Federal Income Taxation" Volume 1, Section 3.19, as follows:

"It is a well-settled rule and one frequently resorted to in the interpretation of taxing statutes, that an executive construction of an act is given special sanction where Congress re-enacts without change the statute so interpreted by the executive department. The absence of change in the later act is highly persuasive evidence of a legislative approval of the regulation construing the earlier act. The rule stated is of special force and effect where the departmental construction in question has been repeated and long continued, if valuable property rights have been based on the departmental construction, * * *"

This Court has spoken only recently of the effect of such unchanged interpretations, and in the case of *Helvering, Commissioner of Internal Revenue, v. Winmill*, 305 U. S. 79, has said: (page 83)

"Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received congressional approval and have the effect of law."

This Court, also, in an earlier decision, in the case of *United States v. Dakota-Montana Oil Company*, 288 U. S. 459, said: (page 466)

"The administrative construction must be deemed to have received legislative approval by the re-enactment of the statutory provision without material change. *Murphy Oil Co. v. Burnet*, 287 U. S. 299; *Brewster v. Gage*, 286 U. S. 327, 337."

It would seem that since Section 506 of the Revenue Act of 1932 fixed no other measure for the basis of taxation than that of "value" an interpretation or ruling by the Commissioner with respect to certain subjects of gifts, such as life insurance policies, was proper. As has heretofore been stated, such interpretation was forthcoming in the 1933 Edition of Regulations 79. Therein, it was provided that the value should be the cash surrender value as of the date of the gift. Such interpretation was a fair and reasonable construction of the statute and furnished a simple and practicable measuring stick and one with which banks and other third parties, who entered into financial transactions having relationship to the value of life insurance policies, would be in accord.

That interpretation continued in full force and effect while two successive Revenue Acts were enacted and, as this Court has said in the case of *McCaughn v. Hershey Chocolate Company*, 283 U. S. 488, on page 492 of the Opinion:

"Possible doubts as to the proper construction of the language used should be resolved in the light of its administrative and legislative history. Shortly after the adoption of the 1918 Act, Art. 22 of Regulations 47, May 1, 1919, announced that 'Candy within the meaning of the act includes * * * sweet chocolate and sweet milk chocolate, whether plain or mixed with fruit or nuts.' This continued to be the ruling of the Treasury Department until the repeal of the tax by § 1100 (a) of the Revenue Act of 1924, 43 Stat. 253, 352. * * * .

"The administrative construction was upheld in 1922 by *Malley v. Walter Baker & Co.*, *supra*, the only case, other than the present, which has considered it. The provision has been consistently enforced as construed, was re-enacted by Congress in the 1921 Act, and remained on the statute books

without amendment until its repeal. Such a construction of a doubtful or ambiguous statute by officials charged with its administration will not be judicially disturbed except for reasons of weight, which this record does not present. See *Brewster v. Gage*, 280 U. S. 327, 336; *Universal Battery Co. v. United States*, 281 U. S. 580, 583; *Fawcus Machine Co. v. United States*, 282 U. S. 375, 378. The re-actment of the statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed. See *National Lead Co. v. United States*, 252 U. S. 140, 146. We see no reason for rejecting that construction."

Congress has dealt with the validity and effectiveness of Regulations issued by the Commissioner or the Treasury Department in the Revenue Act of 1926, and, in Section 1108, paragraph (a), the following was provided:

"(a) In case a regulation or Treasury decision relating to the internal revenue laws, made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary, is reversed by a subsequent regulation or Treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect."

This section was amended by the Revenue Act of 1928, (Section 605), which provided as follows:

"In case a regulation or Treasury decision relating to the internal revenue laws is amended by a subsequent regulation or Treasury decision, made

by the Secretary or by the Commissioner with the approval of the Secretary, such subsequent regulation or Treasury decision may, with the approval of the Secretary, be applied without retroactive effect."

This, again, was amended by the Revenue Act of 1934, (Section 506) which provided as follows:

"The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect."

In speaking of the Amendment, as above quoted from the Revenue Act of 1928, this Court has recently said in its Opinion in the case of *Helvering, Commissioner of Internal Revenue, v. R. J. Reynolds Tobacco Company*, 306 U. S. 110, the following: (Pages 116 and 117)

"It is clear from this provision that Congress intended to give to the Treasury power to correct misinterpretations, inaccuracies, or omissions in the regulations and thereby to affect cases in which the taxpayer's liability had not been finally determined, unless, in the judgment of the Treasury, some good reason required that such alterations operate only prospectively. The question is whether the granted power may be exercised in an instance where, by repeated re-enactment of the statute, Congress has given its sanction to the existing regulation."

"Since the legislative approval of existing regulations by re-enactment of the statutory provision to which they appertain gives such regulations the force of law, we think that Congress did not intend to authorize the Treasury to repeal the rule of law that existed during the period for which the tax is imposed. We need not now determine whether, as

has been suggested, the alteration of the existing rule, even for the future, requires a legislative declaration or may be shown by re-enactment of the statutory provision unaltered after a change in the applicable regulation. As the petitioner points out, Congress has, in the Revenue Acts of 1936 and 1938, retained § 22-(a) of the 1928 Act *in haec verba*. From this it is argued that Congress has approved the amended regulation. It may be that by the passage of the Revenue Act of 1936 the Treasury was authorized thereafter to apply the regulation in its amended form. But we have no occasion to decide this question since we are of opinion that the re-enactment of the section, without more, does not amount to sanction of retroactive enforcement of the amendment, in the teeth of the former regulation which received Congressional approval, by the passage of successive Revenue Acts including that of 1928."

The sections of the Internal Revenue Acts quoted above and the opinions of this Court cited above determine conclusively that the Commissioner cannot apply retroactively an amended and changed regulation, issued in 1936, to gifts concluded in 1935 under an existing regulation, issued in 1933, which had received the legislative approval of Congress in the passage of two succeeding Revenue Acts making no change in the section of the Act to which the 1933 regulation applied.

CONCLUSION.

In conclusion, we submit that the decisions below in *Guggenheim v. Rasquin*, 110 Fed. (2d) 371, and *Powers v. Commissioner*, 115 Fed. (2d) 209, are erroneous and should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 92.—OCTOBER TERM, 1940.

Florence Guggenheim, Petitioner, <i>vs.</i> Martha E. Rasquin, Administratrix of the Estate of Almon Q. Ras- quin, Deceased.	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
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[February 3, 1941.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

It is provided in the Revenue Act of 1932 (47 Stat. 169, 248) that for gift-tax purposes the amount of a gift of property shall be "the value thereof at the date of the gift." § 506. This controversy involves the question of whether such "value" in case of single-premium life insurance policies, which are irrevocably assigned simultaneously with issuance, is cost to the donor or cash-surrender value of the policies. The case is here on a petition for certiorari which we granted because of a conflict among the Circuit Courts of Appeals¹ as respects the proper method for valuation of such gifts made prior to 1936.²

In December, 1934, petitioner purchased, at a cost of \$852,438.50, single-premium life insurance policies on her own life in the aggregate face amount of \$1,000,000. At substantially the same time she assigned them irrevocably to three of her children. Her gift-tax return listed the policies at their asserted cash-surrender value³ of

¹ In conflict with the decision below are *Commissioner v. Haines*, 104 F. (2d) 354 (C. C. A. 3d); *Helvering v. Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *United States v. Ryerson*, 114 F. (2d) 15 (C. C. A. 7th), discussed in Paul, *Studies in Federal Taxation* (3d series) pp. 403, *et seq.*

² Art. 19(9), Treasury Regulations 79, promulgated February 26, 1936, provides that replacement cost at the date of the gift is the measure of value of a single-premium life insurance policy.

³ The government asserts that none of the policies had a cash-surrender value prior to the expiration of one year. In view of our disposition of the case we do not stop to decide whether, in view of the pleadings and the stipulation, that position can be maintained here.

\$717,344.81. The Commissioner determined that the "value" of the policies was their cost and assessed a deficiency which petitioner paid. This is a suit for a refund. Judgment for petitioner in the District Court was reversed by the Circuit Court of Appeals. 116 F. (2d) 371.

We agree with the Circuit Court of Appeals that cost rather than cash-surrender value is the proper criterion for valuation of such gifts under § 506 of the Act.

Cash-surrender value is the reserve less a surrender charge. And in case of a single-premium policy the reserve is the face amount of the contract discounted at a specified rate of interest on the basis of the insured's expected life. If the policy is surrendered, the company will pay the cash-surrender value. It is asserted that the market for insurance contracts is usually the issuing companies or the banks who will lend money on them; that banks will not loan more than the cash-surrender value; and that if policies had an actual realizable value in excess of their cash-surrender value, there would arise a business of purchasing such policies from those who otherwise would surrender them. From these facts it is urged that cash-surrender value represents the amount which would be actually obtained for the policies in a willing buyer-willing seller market—the test suggested by Treasury Regulations 79, Art. 19(1), promulgated October 30, 1933.⁴

That analysis, however, overlooks the nature of the property interest which is being valued. Surrender of a policy represents only one of the rights of the insured or beneficiary. Plainly that right is one of the substantial legal incidents of ownership. See *Chase National Bank v. United States*, 278 U. S. 327, 335; *Vance on Insurance* (2d ed.) pp. 54-56. But the owner of a fully paid life insurance policy has more than the mere right to surrender it; he has the right to retain it for its investment virtues and to receive the face amount of the policy upon the insured's death. That these latter rights are deemed by purchasers of insurance to have substantial value is clear from the difference between the cost

⁴ Art. 19(1) provided: " . . . The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case."

of a single-premium policy and its immediate or early cash-surrender value—in the instant case over \$135,000. All of the economic benefits of a policy must be taken into consideration in determining its value for gift-tax purposes. To single out one and to disregard the others is in effect to substitute a different property interest for the one which was the subject of the gift. In this situation as in others (*Susquehanna Power Co. v. State Tax Commission*, 283 U. S. 291, 296) an important element in the value of the property is the use to which it may be put. Certainly the petitioner here did not expend \$852,438.50 to make an immediate gift limited to \$717,344.81. Presumptively the value of these policies at the date of the gift was the amount which the insured had expended to acquire them. Cost is cogent evidence of value. And here it is the only suggested criterion, which reflects the value to the owner of the entire bundle of rights in a single-premium policy—the right to retain it as well as the right to surrender it. Cost in this situation is not market price in the normal sense of the term. But the absence of market price is no barrier to valuation.⁵ *Lucas v. Alexander*, 279 U. S. 573, 579.

Petitioner, however, argues that cash-surrender value was made the measure of value by Art. 2(5), Treasury Regulations 79, promulgated October 30, 1933, which provided that the "irrevocable assignment of a life insurance policy . . . constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift." The argument is that under this regulation the reserve in case of a single-premium policy covers the prepaid insurance and represents the entire value of the policy. The regulation is somewhat ambiguous. But in our view it applied only to policies upon which current premiums were still being paid at the date of the gift, not to single-premium policies. Accordingly, the problem here involves an interpretation of the meaning of "value" in § 506 unaided by an interpretative regulation.

A. D.irmed.

⁵ In this connection it should be noted that Art. 19(1), *supra*, note 4, did not establish market price as the sole criterion of value.